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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 924.

WIRT K. WINTON, ADMINISTRATOR OF THE ESTATE OF
CHARLES F. WINTON, DECEASED, ET AL., APPELLANTS,

vs.

JACK AMOS AND OTHERS, KNOWN AS THE MISSISSIPPI
CHOCTAWS.

No. 925.

J. S. BOUNDS, ATTORNEY-IN-FACT FOR T. A. BOUNDS,
APPELLANT,

vs.

JACK AMOS AND OTHERS, KNOWN AS THE MISSISSIPPI
CHOCTAWS.

No. 926.

JOHN LONDON, APPELLANT,

vs.

JACK AMOS AND OTHERS, KNOWN AS THE MISSISSIPPI
CHOCTAWS.

No. 927.

WALTER S. FIELD AND MADISON M. LINDLY, APPEL-
LANTS,

vs.

JACK AMOS AND OTHERS, KNOWN AS THE MISSISSIPPI
CHOCTAWS.

No. 928.

J. J. BECKHAM, APPELLANT,

vs.

JACK AMOS AND OTHERS, KNOWN AS THE MISSISSIPPI
CHOCTAWS.

No. 929.

WILLIAM N. VERNON, APPELLANT,

vs.

JACK AMOS AND OTHERS, KNOWN AS THE MISSISSIPPI
CHOCTAWS.

No. 930.

KATIE A. HOWE, EXECUTRIX OF THE ESTATE OF CHESTER HOWE, DECEASED, APPELLANT,

vs.

JACK AMOS AND OTHERS, KNOWN AS THE MISSISSIPPI CHOCTAWS.

APPEALS FROM THE COURT OF CLAIMS.

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1. Court of Claims.

No. 29,821.

The ESTATE OF CHARLES F. WINTON, Deceased, and Others,

VS.

JACK AMOS and Others, Known as the "Mississippi Choctaws."

I. *The Petition and Amended Petitions.*

On October 11, 1906, the claimants filed their original petition. Amended petitions were filed by leave of Court on July 20, 1908, and November 23, 1911. The following are copies of the original petition and second amended petition:

2. In the Court of Claims.

The ESTATE OF CHARLES F. WINTON, Deceased, and Others,

VS.

JACK AMOS and Others, Known as the "Mississippi Choctaws."

(Filed Oct. 11, 1906.)

To the Honorable, the Chief Justice and Associate Judges of the Court of Claims:

Your petitioners, on behalf of the estate of Chas. F. Winton, deceased, his associates and assigns, respectfully submit:

That on April 26th, 1906, an Act of Congress known as "An Act to provide for the final disposition of the affairs of the Five Civilized Tribes in the Indian Territory, and for other purposes" (Public No. 129), made the following provision:

"That the Court of Claims is hereby authorized and directed to hear, consider, and adjudicate the claims against the Mississippi Choctaws of the estate of Charles F. Winton, deceased, his associates and assigns, for services rendered and expenses incurred in the matter of the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation, and to render judgment thereon on the principle of quantum meruit, in such amount or amounts as may appear equitable or justly due therefor, which judgment, if any, shall be paid from any funds now or hereafter due such Choctaws by the United States. Notice of such suit shall be served on the Governor of the Choctaw Nation, and the Attorney General shall appear and defend the said suit on behalf of said Choctaws." (Exhibit 1, p. 352.)

Your petitioners, representing Charles F. Winton, deceased, and his associates and assigns, now submit to this honorable court, for

adjudication their claims for services rendered and expenses incurred in the matter of the claims of the Mississippi Choctaws to citizenship in the Choctaw Nation, and pray this honorable court to render judgment thereon on the principle set forth by the statute above quoted, and in order to enable this honorable court to discharge that duty they respectfully submit, in brief, the nature of the services rendered and the expenses incurred in performing the services for the Mississippi Choctaws.

Your petitioners will undertake to establish the fact that they are entitled to the credit of having procured for the Mississippi Choctaws estates worth five thousand dollars each, and that your petitioners have in this service spent ten years of time, without compensation and at great expense in money, and at the risk and hazard of losing every dollar of expense invested in the interest of the Mississippi Choctaws, and that, because of this hazard, your petitioners are entitled to be dealt with on the basis of a contingent fee, since they could only be compensated out of the estates obtained for their clients and because if they had failed the Mississippi

4 Choctaws would not have been able to compensate your petitioners in any way whatever for the services rendered and expenses incurred.

Your petitioners will submit in this cause their contracts with the Mississippi Choctaws, and pray judgment of this honorable court in accordance with the form of these contracts showing what all parties in interest though reasonable and just at the time when the service was undertaken, and will submit, also, the evidence showing that the services were actually rendered in good faith, beginning in 1896 and extending up to 1906. The attention of the Court is called to the further fact that your petitioners must still wait an indeterminate period in which they may recover compensation for the services rendered and expenses incurred.

In the year 1896, Congress passed an Act directing the enrollment of all the Indian people of the Five Civilized Tribes, with a view to ultimate allotment, and your petitioners, believing that the full-blood Choctaws of Mississippi ought to be allowed to participate in the distribution of such estate, both because they were entitled under the Treaty of 1830, Article 14, and because of the further reason that the Mississippi Choctaws had furnished their proportion of the consideration with which the western Choctaws and Chicasaws lands were purchased, determined to assist the Mississippi Choctaws to establish their rights. In accordance with this determination,

your petitioners, on behalf of Jack Amos and other Mississippi Choctaws, submitted petitions to the so-called Dawes Commission, at Vinita, Indian Territory, in the summer of 1896. 5 These petitions were rejected by said Commission, and the rights of the Mississippi Choctaws to enrollment were denied.

Thereupon an appeal was made by your petitioners on behalf of Jack Amos and other Mississippi Choctaws, to the United States Court, conducted by Hon. William H. H. Clayton, at South McAlester, Indian Territory, and again their rights were denied. A

copy of this decision of Judge Clayton will be found in Exhibit 1, p. 461.

In December, 1896, your petitioners filed a short memorial, in the name of Jack Amos and other Mississippi Choctaws, in the Senate and House of Representatives, a copy of which appears upon Exhibit 1, p. 52. In January, 1897, a second memorial on behalf of the Mississippi Choctaws was filed by your petitioners, a copy of which will be found in Exhibit 1, pp. 54 to 61. After Judge Clayton made his decision adversely to the Mississippi Choctaws, your petitioners appealed therefrom by memorial and petition to the Honorable the Secretary of the Interior, and to the Congress of the United States (Exhibit 1, pp. 62 to 89). On February 11, 1897, your petitioners drew up a resolution, and caused its passage through the Senate of the United States by the kindness of Senator Walthall, of Mississippi, as follows, to-wit:

Resolved, That the Secretary of the Interior be, and he is hereby, directed to transmit to the Senate the following information:

6 1st. A copy of the memorial of the Choctaw Nation of December 24, 1889, relative to the Mississippi Choctaws.

2d. The deposition of Greenwood Leflore, ex-Chief of the Choctaw Nation, of February 24, 1843, before United States Commissioners Clavbourne and Graves, relative to the importance of the Fourteenth Article of the Treaty of 1830.

3d. Whether or not the Choctaws entitled to remain in Mississippi by the fourteenth article were reported by United States Commissioners Murray and Vroom to the President of the United States on July 31, 1838, as having been, in a great number of cases, forced to remove from the reservations granted them by the fourteenth article.

4th. Whether or not the Mississippi Choctaws were parties to any subsequent treaty, or have ever executed a relinquishment of their rights to the Choctaw citizenship. (Exhibit 1, p. 91.)

This resolution was argued before the Indian Office by your petitioners, and a favorable report obtained (Exhibit 1, p. 92).

In the meantime your petitioners urged the rights of the Mississippi Choctaws upon the committees in Congress, insisting upon the allowance of their rights, and having drawn and had introduced bills providing for the adjustment of their rights. On March 3, 1897, your petitioners obtained from the Committee on Indian Affairs of the House of Representatives a report favorable to the Mississippi Choctaws whose grandparents were not less than of the half Choctaw blood. (Exhibit 1, p. 90, H. R. Report 3080, 54th Cong., 2d Sess.)

On June 7, 1897, your petitioners caused to be passed by Congress a provision of the Indian appropriation act of that date, as follows:

7 "That the commission appointed to negotiate with the Five Civilized Tribes in the Indian Territory shall examine and report to Congress whether the Mississippi Choctaws under their treaties are not entitled to all the rights of Choctaw citizenship except an interest in the Choctaw annuities." (Exhibit 1, p. 121.)

Your petitioners with great pains presented to the Dawes Commission elaborate arguments in writing, and by oral arguments, at

Muskogee, Indian Territory, insisting upon the rights of the Mississippi Choctaws, and procured from said Commission a report favorable in part to the claims of the Mississippi Choctaws, as follows, to wit:

"If, in accordance with this conclusion of the Commission, these Mississippi Choctaws have the right at any time to remove to the Indian Territory, and, joining their brethren there, claim participation in all the privileges of a Choctaw citizen, save participation in their annuities, still, if any person presents himself claiming this right, he must be required by some tribunal to prove the fact that he is a descendant of some one of those Indians who originally availed themselves of and conformed to the requirements of the fourteenth article of the treaty of 1830. The time for making application to this commission to be enrolled as a Choctaw citizen has expired. It would be necessary, therefore, to extend by law the time for persons claiming this right to make application and be heard by this commission or to create a new tribunal for that purpose." (H. R. Doc., 274, 55th Cong., 2d Sess.; Exhibit 1, p. 143.)

This report was dated January 28, 1898.

On June 28, 1898, the Curtis Act was passed, your petitioners representing before the Committees of the House and Senate, the rights of the Mississippi Choctaws, and procured legislation protecting their interests, as follows: The United States Commission was instructed to identify those Choctaws, and the general act which would have barred all persons who had not theretofore removed to the Choctaw Nation was amended so as to prevent Mississippi Choctaws from being barred by those provisions, in the following language, to wit:

"Said Commission shall have authority to determine the identity of Choctaw Indians claiming rights in the Choctaw lands under article fourteen of the treaty between the United States and the Choctaw Nation concluded September twenty-seventh, eighteen hundred and thirty, and to that end they may administer oaths, examine witnesses, and perform all other acts necessary thereto and make report to the Secretary of the Interior."

* * * * *

"No person shall be enrolled who has not heretofore removed to and in good faith settled in the Nation in which he claims citizenship; Provided, however, that nothing in this Act shall be so construed as to militate against any rights or privileges which the Mississippi Choctaws may have under the laws of or treaties with the United States."

(Page 9, Public 162—An Act for the protection of the people of the Indian Territory, and for other purposes. Exhibit 1, p. 154.)

The Act as first proposed would have barred all persons who had not theretofore removed to and in good faith settled in the Nation in which they claimed citizenship. The amendment procured by your petitioners, excepting the Mississippi Choctaws, protected their rights from complete loss by this Act. The value of this service can not be exaggerated.

Your petitioners kept in close touch with the Mississippi Choctaws by personal visits extending over long periods of time and by extensive correspondence and the employment of many men in Mississippi, and, on July 1, 1898, all Mississippi Choctaws, by letter of that date, were instructed as to their duty of proving themselves descendants of fourteenth article claimants, and that they were required to move West. The letter of instructions is as follows:

"NEWKIRK, O. T., July 1, 1898.

"To the Mississippi Choctaws:

"For your information I enclose report No. 3080, H. R., 54th Congress, 2d Session. The Indian Committee of House of Representatives decided favorably to the Mississippi Choctaws, under date of March 3, 1897. This report was obtained for you by active labor, first hunting up the facts, and then getting Senator Walthall to pass a resolution through the Senate to get the information (Sen. Doc. 129, 54th Cong. 2d Sess.), and then soliciting Mr. Allen, of Mississippi, to prepare it. By the help of Mr. Williams and Senator Walthall and Mr. Allen the following item was put in the Indian appropriation act of June 7, 1897:

"That the Commission appointed to negotiate with the Five Civilized Tribes in the Indian Territory shall examine and report to Congress whether the Mississippi Choctaws, under their treaties, are not entitled to all the rights of Choctaw citizenship, except an interest in the Choctaw annuities."

"This Commission, January 28, 1898, submitted their report, copy herewith (H. R. Doc. 274, 55th Cong., 2d Sess.), deciding that the Mississippi Choctaw, to avail himself of the 'privileges of a Choctaw citizen,' must prove himself a descendant of a fourteenth article claimant, and in good faith join the Choctaws west with the intent to become one of the citizens of the Nation.

"In bill H. R. 8581 it was provided June, 1898, that—

"Said Commission shall have authority to determine the identity of Choctaw Indians claiming rights in the Choctaw lands under article fourteen of the treaty between the United States and the Choctaw Nation, concluded September 27, 1830, and to that end they may administer oaths, examine witnesses, and perform all other acts necessary thereto, and report to the Secretary of the Interior."

"It provides further that—

"No person shall be enrolled who has not heretofore removed to and in good faith settled in the Nation in which he claims citizenship; provided, however, that nothing contained in this act shall be so construed as to militate against any rights or privileges which the Mississippi Choctaws may have under the laws of or the treaties with the United States."

"Not only the Dawes Commission found that the Mississippi Choctaws would have to move to Indian Territory and establish residence in good faith there, but the United States Court, Judge Clayton presiding, July 1, 1897, found that only those Choctaws who had previous to July 1, 1897, settled in good faith in the Choctaw Nation were entitled to citizenship.

"By special authority of an item in the Indian appropriation bill allowing an appeal from this decision, I shall on your behalf make an appeal to the Supreme Court of the United States to test the question of your rights.

"In making up the roll of Mississippi Choctaws it is of the highest importance to furnish proof that each claimant is a descendant of a fourteenth article claimant; for this reason I have secured the list of such claimants, and will make it available to my clients as soon as practicable.

11 "The Dawes Commission will probably take evidence this fall and enroll all who are truly entitled.

"Yours, very respectfully,

"C. F. WINTON,
"Newkirk, O. T."

In February, 1900, your petitioners prepared a petition to Congress on behalf of the Mississippi Choctaws praying the granting of the rights due them, or, in the alternative, the right to be heard in court. (Exhibit 1, p. 80, H. R. Doc. 426, 56th Cong., 1st Sess.)

The attention of the Court is called to the argument submitted by your petitioners in this petition, and also the argument made by your petitioners before the Senate Committee on Indian Affairs, in the matter of Senate Bill 1742, (Exhibit 1, p. 188).

Fortunately for your petitioners, a large number of the petitions filed by them were made public documents, and therefore a permanent and indisputable record was kept of the services performed by your petitioners in the printed archives of the Government itself.

It is impossible to describe the innumerable detail of a service extending through this long period of time, but your petitioners constantly represented the Mississippi Choctaws and their rights before the Department of the Interior, seeking from the Department full justice to the Mississippi Choctaws, while, at the same time, the Department was being solicited and urged by the authorities of the Choctaws and Chickasaw Nations, and by their attorneys, that the rights of the Mississippi Choctaws should not be allowed. To describe these various oral arguments would be to make a useless record

12 that can in no way add to the force of the printed record which is a part of the Government records. It is sufficient to say that wherever oral argument was believed necessary on behalf of the Mississippi Choctaws your petitioners made it, whether in the office of the Commissioner of Indian Affairs, or in the office of the Secretary of the Interior, or before the Assistant Attorney General for the Department of the Interior, or before the Attorney General of the United States, or before the Committees in Congress, or before the United States Commission to the Five Civilized Tribes in the Indian Territory, or elsewhere.

Your petitioners also appeared before the Courts, and before the Supreme Court of the United States, in the Emma Neighbours case, a copy of their brief before the Supreme Court being here submitted. (Exhibit 1, p. 513.)

Numerous bills were introduced looking to an adjustment of the

rights of the Mississippi Choctaws, but it was impossible to obtain the privilege of going into the courts on account of the hostility of the attorneys of the Choctaw and Chickasaw Nations.

In 1899, the Commission to the Five Civilized Tribes, on March 10, prepared a roll containing the names of most of the Mississippi Choctaws, which was approved by the Secretary of the Interior on August 3, 1899, as follows:

"Prima facie, the persons appearing on said schedule, containing the names of the Mississippi Choctaws entitled to enrollment as adopted Indians, would be entitled to such enrollment, subject, however, to the final action of the Department when the final rolls shall be submitted by the Commission for the approval of the Secretary."

(H. R., Doc. 426, 56th Cong., 1st Sess.)

And insisted that they should be required to remove to the Indian Territory in order to enjoy their rights as joint owners of the lands of the Choctaw Nation.

On July 25, 1899, Honorable W. A. Jones, Commissioner of Indian Affairs, with the approval of Honorable Thomas Ryan, Acting Secretary of the Interior, on August 8, 1899, directed the Commission to the Five Civilized Tribes as follows:

"Third: In addition to your report of Mississippi Choctaws identified by you, already submitted, you will, where Mississippi Choctaw Indians or their descendents, may have removed from the State of Mississippi to, and settled within the bounds of the Choctaw and Chickasaw country, before completion of the rolls, and appear before you for identification, and make a record of the facts, upon their testimony, taken before you, and that of other witnesses, when deemed necessary, with a list of their names and the names of their children living with them and born in lawful wedlock, and such description of them as may be necessary for their identification under Act of Congress of June 28, 1898, and report same through this office, together with your decision as to their right of identification as persons coming within the provisions of Article fourteen of the treaty of 1830, between the Choctaws and the United States, for determination by the Department." (Exhibit 1, p. 200.)

Your petitioners made earnest efforts to secure for the Mississippi Choctaws their rights without requiring them to remove from the country in Mississippi.

14 The Choctow Nation insisted in the meantime upon imposing conditions that would bar the Mississippi Choctaws from citizenship, employing various attorneys for the purpose of defeating them, being represented by Honorable James S. Standley and Messrs. Mansfield, McMurray and Cornish. The latter firm made a contract with the Choctow Nation by which they were to receive a fee on a percentage basis for every person who could be defeated in his application for the rights of citizenship.

This action on the part of the Choctow Nation of course made it extremely difficult for your petitioners, who were met at every point by the vigorous opposition of those attorneys, who by ingenious de-

vices sought to prevent legislation in behalf of the Mississippi Choctaws and to prevent them being heard in court, which the Mississippi Choctaws, through your petitioners, constantly sought. The remedy of going into court was never granted to the Mississippi Choctaws, although every effort was made, through many years, by your petitioners on their behalf.

On March 16, 1900, your petitioners, acting through Messrs. Logan, Demond & Harley, and Charles F. Winton, prepared another petition with proper exhibits, earnestly pressing upon Congress the following legislation:

"Provided, That any Mississippi Choctaw duly identified and enrolled as such by the United States Commission to the Five Civilized Tribes shall have the right, at any time prior to the approval
15 of the final rolls of the Choctaws and Chickasaws by the Secretary of the Interior, to make settlement within the Choctaw Chickasaw country, and on proof of the fact of bona fide settlement they shall be enrolled by the said United States Commission and by the Secretary of the Interior as Choctaws entitled to allotment."

(Exhibit 1, pp. 202-209, Senate Doc. 263, 56th Cong. 1st Sess.)

This very important petition on behalf of the Mississippi Choctaws was granted by Congress on May 31, 1900, in the following language: (Exhibit 1, p. 227.)

"Provided, That any Mississippi Choctaw duly identified as such by the United States Commission to the Five Civilized Tribes shall have the right, at any time prior to the approval of the final rolls of the Choctaws and Chickasaws by the Secretary of the Interior to make settlement within the Choctaw-Chickasaw country, and on proof of the fact of bona fide settlement may be enrolled by the said United States Commission and by the Secretary of the Interior as Choctaws entitled to allotment."

The attorneys for the Choctaw Nation, who were resisting your petitioners, secured an amendment to this provision, intending to make void the contracts of the Mississippi Choctaws so as to prevent the Mississippi Choctaws being able to procure the services and expense money necessary to protect their interests, by the following provision, which appears in the same immediate connection, to wit:

"Provided further, that all contracts or agreements looking to the sale or incumbrance in any way of the lands to be allotted to said Mississippi Choctaws, shall be null and void." (Exhibit
16 1, p. 227.)

The Mississippi Choctaws, by the terms of the fourteenth article of the treaty of 1830, were made citizens of the United States, and, of course, had a right to contract, as they were not Indians who were wards of the Government of the United States. (Exhibit 1, p. 1.) Nevertheless, attention is called to this legislation obtained by the attorneys for the Choctaw Nation, which had for its purpose depriving the Mississippi Choctaws of the right to use any part of their estates as a conditional fee for the collection of what was due them.

Your petitioners, on behalf of the Mississippi Choctaws, continued their exertions, and insisted upon the right to go into the courts to establish the rights of the Mississippi Choctaws before this honorable United States Court of Claims.

On January 29, 1901, a favorable report was obtained. (Exhibit 1, p. 212, H. R. No. 2522, 56th Cong., 2d Sess.)

This effort by your petitioners to obtain the right to be heard in court failed, however, and subsequent efforts continued to fail on account of the hostility of the attorneys of the Choctaw Nation and the extreme difficulty of procuring the passage of an independent bill through the Congress of the United States, where the opposition is serious and persistent.

After the passage of the above legislation authorizing all Mississippi Choctaws to allotment on proof of bona fide settlement, the Choctaws and Chickasaws negotiated an agreement with the United States Commission to the Five Civilized tribes, and under color of carrying out the act of Congress above quoted inserted in said agreement numerous provisions putting limitations upon the Mississippi Choctaws and the rights recognized in them by the act of Congress, as will appear from the following quotation (Exhibit 1, p. 248:)

"13. All persons heretofore identified by the Commission to the Five Civilized Tribes as Mississippi Choctaws, and whose names appear upon the schedule dated March 10, 1899, prepared by said Commission under the provisions of the Act of Congress approved June 28, 1898 (30 Stats. 495), and such full-blooded Choctaw Indians residing in the State of Mississippi, and such full-blooded Choctaw Indians as may have removed from the State of Mississippi to Indian Territory, as may be identified by said Commission, shall alone constitute the "Mississippi Choctaws" entitled to benefit under this agreement.

"14. All "Mississippi Choctaws" as herein defined, who shall remove to and in good faith establish their residence upon the lands of the Choctaw and Chickasaw tribes within six months after the ratification of this agreement shall be enrolled by said Commission upon a separate roll designated "Mississippi Choctaws;" and lands equal in value to lands allotted to citizens of the Choctaw and Chickasaw tribes shall be set apart for each of them. All such persons who reside continuously upon the lands of the Choctaw and Chickasaw tribes for a period of three years after enrollment as above provided, shall, upon proof of such continuous residence, receive patents as provided in the Atoka agreement, and they shall hold the lands thus allotted to them as provided in the Atoka agreement for citizens of the Choctaw and Chickasaw tribes.

"15. If, at the end of three years after such enrollment, any such "Mississippi Choctaw" fails to make proof of continuous bona fide residence upon said lands as above provided, he shall be deemed to have acquired no interest in the lands thus set apart to him, and the said lands shall be sold at public auction for cash under rules and regulations prescribed by the Secretary of

the Interior and the proceeds paid into the Treasury of the United States to the credit of the Choctaw and Chickasaw tribes. Such lands shall not be sold for less than their appraised value according to the appraisement provided for in the Atoka agreement. Upon payment of the full purchase price patent shall issue to the purchaser in accordance with the provisions of the Atoka agreement wherein it provides for patents to allottees."

Here it will be observed that the Interior Department permitted the authorities of the Choctaws and Chickasaws to impose the following limitations upon the Act of Congress previously passed, qualifying and diminishing the rights recognized in the clients of your petitioners, to wit:

They were required to remove and establish residence within six months after the ratification of the agreement of February 7, 1901. They were required to reside continuously upon the lands of the Choctaw and Chickasaw tribes for the period of three years after enrollment as above provided.

They were required at the end of three years to make proof of such removal and continuous residence.

Your petitioners sought in vain to procure an amendment of this agreement for the reason that it would bar a large number of the Mississippi Choctaws.

Many of these people were under labor contracts in Mississippi that made removal within six months impossible, and the Choctaw authorities knew it and intended to raise an artificial barrier. Many

19 of these people were devoted to their Mississippi homes, and it was believed that they would refuse to comply with immediate removal and three years' continuous residence in order to procure their proper rights, and thus another artificial barrier was raised against them.

Many of these people were ignorant and poor, and it was believed for that reason that such persons would not remove within the time, nor make the proof within the time prescribed, and thus another artificial barrier was raised against these people, in the face of the Act of Congress.

Your petitioners sought in vain to prevent this injury to the Mississippi Choctaws, as will appear in Senate Document 319, 57th Congress, 1st Session (Exhibit 1, p. 281).

In this memorial your petitioners vigorously set up the injury and the wrong proposed to be done to the Mississippi Choctaws, and we pray that this memorial be examined by this honorable court as proof of the earnest effort made by your petitioners to protect the rights of the Mississippi Choctaws.

Your petitioners respectfully state that this agreement, unjust to the Mississippi Choctaws, of the 7th day of February, 1901, was defeated by them by preventing its passage at that session of Congress. They were unable, however, to prevent the ultimate passage of substantially the same provisions, which were made even more stringent by the Interior Department, which yielded to the demands of the Choctaw and Chickasaw Nations, as will appear by Sections 41, 42,

20 43, and 44 of the Act approved July 1, 1902, entitled "An Act to ratify and confirm an agreement with the Choctaw and Chickasaw tribes of Indians, and for other purposes," as follows (see Exhibit 1, p. 332):

"41. All persons duly identified by the Commission to the Five Civilized Tribes under the provisions of Section 21 of the Act of Congress approved June 28, 1898 (30 Stats. 495), as Mississippi Choctaws entitled to benefits under article fourteen of the treaty between the United States and the Choctaw Nation, concluded September 27, 1830, may, at any time within six months after the date of their identification as Mississippi Choctaws by the said Commission, make bona fide settlement within the Choctaw-Chickasaw country, and upon proof of such settlement to such Commission within one year after the date of their identification as Mississippi Choctaws shall be enrolled by such Commission as Mississippi Choctaws entitled to allotment as herein provided for citizens of the tribes, subject to the special provisions herein provided as to Mississippi Choctaws, and said enrollment shall be final when approved by the Secretary of the Interior. The application of no person for identification as a Mississippi Choctaw shall be received by said Commission after six months subsequent to the date of the final ratification of this agreement, and in the disposition of such applications all full-blood Mississippi Choctaw Indians and the descendants of any Mississippi Choctaw Indians whether of full or mixed blood who received a patent to land under the said fourteenth article of the said treaty of eighteen hundred and thirty, who had not moved to and made bona fide settlement within the Choctaw-Chickasaw country prior to June twenty-eighth, eighteen hundred and ninety-eight, shall be deemed to be Mississippi Choctaws entitled to benefits under article fourteen of the said treaty of September twenty-seventh, eighteen hundred and thirty, and to identification as such by said

21 Commission, but this direction or provision shall be deemed to be only a rule of evidence, and shall not be invoked by or operate to the advantage of any applicant who is not a Mississippi Choctaw of the full blood, or who is not the descendant of a Mississippi Choctaw who received a patent to land under said treaty, or who is otherwise barred from the right of citizenship in the Choctaw Nation, all of said Mississippi Choctaws so enrolled by said Commission shall be upon a separate roll.

"42. When any such Mississippi Choctaw shall have in good faith continuously resided upon the lands of the Choctaw and Chickasaw Nations for a period of three years, including his residence thereon before and after such enrollment, he shall, upon due proof of such continuous, bona fide residence, made in such manner and before such officer as may be designated by the Secretary of the Interior, receive a patent for his allotment, as provided in the Atoka agreement, and he shall hold the lands allotted to him as provided in this agreement for citizens of the Choctaw and Chickasaw Nations.

"43. Applications for enrollment as Mississippi Choctaws, and applications to have lands set apart to them as such, must be made personally before the Commission to the Five Civilized Tribes.

Fathers may apply for their minor children; and if the father be dead, the mother may apply; husbands may apply for wives. Applications for orphans, insane persons, and persons of unsound mind may be made by duly appointed guardian or curator, and for aged and infirm persons, and prisoners, by agents duly authorized thereunto by power of attorney, in the discretion of said Commission.

"44. If within four years after such enrollment any such Mississippi Choctaw, or his heirs or representatives if he be dead, fails to make proof of such continuous bona fide residence for the period so prescribed, or up to the time of the death of such Mississippi Choctaw, in case of his death after enrollment, he, and his heirs and representatives, if he be dead, shall be deemed to have acquired

22 no interest in the lands set apart to him, and the same shall be sold at public auction for cash, under rules and regulations prescribed by the Secretary of the Interior, and the proceeds paid into the Treasury of the United States to the credit of the Choctaw and Chickasaw tribes, and distributed *per capita* with other funds of the tribes. Such lands shall not be sold for less than their appraised value. Upon payment of the full purchase price patent shall issue to the purchaser."

It will be seen by this honorable court that the attorneys for the Choctaw Nation were thus able to impose various additional limitations upon the rights recognized in the Act of Congress of May 31, 1900.

For instance—First, they must be duly identified under the provisions of Section 21 of the Act of Congress approved June 28, 1898, as Mississippi Choctaws entitled to benefits under article fourteen of the treaty of 1830, thus limiting the scope of their identification; Second, they were then required, within six months after the date of their identification, to remove from Mississippi to Indian Territory, and make bona fide settlement; Third, they were required to make proof of such settlement within one year after the date of their identification; Fourth, even when these conditions were complied with, they could be barred in various ways, as no Mississippi Choctaw could apply for identification after six months from the date of this act; Fifth, a further limitation was imposed that only full-blood Mississippi Choctaw Indians and the descendants of Mississippi Choctaws who were patentees under the fourteenth article who had not moved to or made bona fide settlement in the Choctaw-Chickasaw country prior to June 28, 1898, should be 23 deemed Mississippi Choctaws, and entitled to benefits and to identification.

It was further provided in this agreement, by this latter provision, that—

"this direction or provision shall be deemed to be only a rule of evidence, and shall not be invoked or operate to the advantage of any applicant who is not a Mississippi Choctaw of the full-blood, or who is not the descendant of a Mississippi Choctaw who received a patent to land under said treaty, or who is otherwise barred from the right of citizenship in the Choctaw Nation."

This honorable court will observe the ingenious manner in which

the Mississippi Choctaws were being engineered out of the rights granted to them by the act of Congress obtained by your petitioners.

This agreement obtained by the attorneys of the Choctaw Nation, in section 42, required proof of three years continuous residence.

The further condition was imposed that within four years after such enrollment the Mississippi Choctaw should make proof of such bona fide residence, otherwise he would be barred and the land allotted to him would be taken from him and his children.

From time to time thereafter your petitioners sought to improve the conditions thus imposed upon the Mississippi Choctaws. This effort is illustrated by Document 614, H. R., 58th Congress, 2d Session, Exhibit 1, p. 341, to which the attention of this honorable court is very particularly invited.

24 The antagonism of the attorneys for the Choctaw Nation is exhibited by their enjoining the Dawes Commission from departing in the slightest degree from the conditions which they had ingeniously imposed upon the Mississippi Choctaws. This is set forth in a bill of equity, a copy of which is attached hereto, Exhibit 1, p. 344. It was not until June 21, 1903, that your petitioners, representing the Mississippi Choctaws, secured the final removal of these unjust conditions, which was done in Indian appropriation act approved of that date (Exhibit 1, p. 382), as follows, to wit:

"No distinction shall be made in the enrollment of full-blood Mississippi Choctaws who have been identified by the United States Commission to the Five Civilized Tribes, and who had removed to the Indian Territory prior to March fourth, nineteen hundred and six, and who shall furnish proof thereof." (Public 258, p. 18.)

It will be observed that this latter provision does away with the distinctions in the enrollment of full-blood Mississippi Choctaws who have been identified and who had removed to the Indian Territory prior to March 4, 1906, and who furnished proof thereof. In this manner some of the artificial barriers have been removed, and there are now a large number of Mississippi Choctaws who have been enrolled and have been allotted land.

Your petitioners, knowing that the Mississippi Choctaws were entitled to the rights of citizenship in the Choctaw Nation, and that these rights would not be accorded to them unless they were vigorously asserted and enforced, determined, in 1896, to undertake the protection of the full-blood Mississippi Choctaws or those who

25 might be properly classed as such. With a view to this work, Charles F. Winton went to Mississippi and visited every Choctaw neighborhood, advising the Choctaws of their rights. These rights were based upon the treaty of 1830. The treaty had long since been forgotten. The Mississippi Choctaws were very poor, were very ignorant, and were superstitious and easily influenced by the planters in whose fields they worked. Their labor was valuable to Mississippi, in the cotton fields, in doing heavy work, in fencing, clearing, making roads, etc. Their neighbors advised them against listening to the advice that they should seek their rights in the Indian Territory. It was with great difficulty that the confidence of the Mississippi Choctaws was obtained, and it was impossible to ob-

tain their continuous and intelligent co-operation at all times; yet in the main they did what they could to co-operate in procuring the rights now obtained for them. They made contracts with Charles F. Winton, and later with those associated with said Winton, particularly C. E. Dailey, who was associated with the firm of Logan, Demond & Harley, the contracts being made with him because he was actively engaged in the practice of law and in the service of C. F. Winton. A list of these contracts is respectfully submitted to the court as the basis of the employment of Charles F. Winton, his associates and assigns.

Your petitioners respectfully point out that the actual records of the Government exhibit the fact, beyond the possibility of all doubt, that the Mississippi Choctaws owe their estates to your petitioners and to the labor performed by your petitioners during
26 ten years of patient and unrewarded service.

Your petitioners have been at very great expense in conducting this campaign for the Mississippi Choctaws, and in procuring for them these estates, and their contracts are humbly submitted to the Court as evidence that the Mississippi Choctaws did employ your petitioners to perform this labor; that the service was rendered, not to one individual, but to every individual who is enrolled and who has obtained the right to this great estate.

Each one of these individuals will receive 320 acres of average measure of value. It is a low estimate to say that such land is worth fifteen dollars per acre. Each one of these individuals will receive his pro rata part of the Choctaw General Fund, amounting to nearly three millions of dollars, and his pro rata part of the proceeds of the townsites in the Choctaw and Chickasaw Nations, and of the proceeds of the great area of unallotted lands, which amounts to millions of acres, proof of which will be hereafter submitted. The total value of the property involved can safely be placed at twenty-five millions of dollars, and it would be a very conservative estimate to value such estates at five thousand dollars per capita.

Your petitioners humbly submit that on a basis of quantum meruit they should receive a reasonable percentage upon such estates. This percentage should be determined by the contracts, which show what your petitioners and the Mississippi Choctaws agreed to
27 be a fair measure of the value of such services. It should be determined in the light of the refusal of the Dawes Commission, in 1896, to enroll them; in the light of Judge Clayton's adverse decision rendered in 1896, and in the continued hostility, throughout ten years, of the Choctaw authorities to allow their allotment. It should be determined in the light of the long time necessary to procure a successful issue; in the light of the expenses involved; in the light of the personal sacrifice required in carrying on a contest for clients who were too poor to contribute a single dollar to sustain it.

Charles F. Winton, due to his exposure in Mississippi, lost his life, and died in poverty.

In view of the fact that each Mississippi Choctaw family has been placed in a condition of comparative affluence, so that every person now is possessed of property easily worth five thousand dollars, your

petitioners humbly submit their claims for compensation to the considerate judgment of this honorable court.

Respectfully submitted.

CHARLES F. WINTON,
By WIRT K. WINTON,
ROBERT L. OWEN, AND OTHERS.

ROBERT L. OWEN, *Attorney*.
JAMES K. JONES, *of Counsel*.

28 WESTERN JUDICIAL DISTRICT,
 Indian Territory:

Before me, the undersigned, a Notary Public in and for the district aforesaid, personally appeared Robert L. Owen, one of the petitioners above named, and, having been duly sworn, on his oath says: That he is acquainted with the matters and things set forth in the above and foregoing petition; that he has carefully read the same, and that he knows of the services rendered by Chas. F. Winton, deceased, his associates, and assigns, and that the claim for compensation is justly made, and that the prayer of the petitioners should be allowed.

That the affiant knows the contents of the foregoing petition, that all the matters and things therein set forth are matters known to the affiant of his own knowledge to be true in substance and in fact, and that all the matters therein set forth as upon information he confidently believes to be true.

ROBT. L. OWEN.

Subscribed and sworn to before me this 29th day of September, 1906.

[SEAL]

CHAS. MERCER, *Notary Public*.

My commission expires November 19, 1907.

28½ WESTERN JUDICIAL DISTRICT,
 Indian Territory:

At the same time and place personally appeared Wirt K. Winton, who, having been duly sworn, on oath says: That he is the eldest son of Chas. F. Winton, deceased, and acts on behalf of Mrs. Chas. F. Winton and Lula Winton, the daughter of Chas. F. Winton, they being the only three adult heirs of said Chas. F. Winton, deceased; that he has duly read the above petition, and that the same is true upon his information and belief. That the interests of the said Chas. F. Winton, by request of the adult heirs aforesaid, are now represented by Robert L. Owen. That the claimants in the above entitled matter, as therein set forth, are justly entitled to the relief sought. That no compensation has been made to them for the services rendered and expenses incurred.

WIRT K. WINTON.

Subscribed and sworn to before me this 29th day of September, 1906.

[SEAL]

CHAS. MERCER, *Notary Public*.

My commission expires November 19, 1907.

29

In the Court of Claims.

The ESTATE OF CHARLES F. WINTON, Deceased, and Others, His Associates,

VS.

JACK AMOS and Others, Known as the Mississippi Choctaws.

Second Amended Petition.

(Filed Nov. 23, 1911.)

To the Honorable, the Chief Justice, and Associate Judges of the Court of Claims:

Your petitioner, Wirt K. Winton, the administrator of the estate of Charles F. Winton, deceased, heretofore, by due and proper orders having been substituted as the nominal claimant herein, comes now on behalf of the estate of Charles F. Winton, deceased, and also on behalf of the associates and assigns of the said Charles F. Winton, deceased, and come also James K. Jones, administrator of the estate of James K. Jones, deceased, and Robert L. Owen in his own behalf, alone, and by leave of the court first had and obtained present this second amended petition, and aver and charge—

30

I.

That by an Act of Congress of April 26, 1906, entitled: "An Act to provide for the final disposition of the affairs of the Five Civilized Tribes in the Indian Territory, and for other purposes," (34 Stat. L. 140), it is provided:

"That the Court of Claims is hereby authorized and directed to hear, consider, and adjudicate the claims against the Mississippi Choctaws of the estate of Charles F. Winton, deceased, his associates and assigns, for services rendered and expenses incurred in the matter of the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation, and to render judgment thereon on the principle of quantum meruit, in such amount or amounts as may appear equitable or justly due therefor, which judgment, if any, shall be paid from any funds now or hereafter due such Choctaws by the United States. Notice of such suit shall be served on the Governor of the Choctaw Nation, and the Attorney-General shall appear and defend the said suit on behalf of said Choctaws."

II.

2. The associates of the said Charles F. Winton, deceased, are as follows:

Robert L. Owen, now resident in Muskogee County, Oklahoma;

31 James K. Jones, deceased since the filing of the original petition, whose administrator, James K. Jones, is resident within the District of Columbia;

Walter S. Logan, deceased since the filing of the original petition, whose estate is being administered in the City and County of New York, of which the said Logan, deceased, was a resident;

Preston C. West, of Muskogee County, Oklahoma; Frank B. Crosthwaite, resident in the District of Columbia;

John Boyd, also resident in the District of Columbia; for all of whom the said Wirt K. Winton appears; except that the said Robert L. Owen appears in his own behalf alone, and the said James K. Jones also appears as the administrator of the estate of James K. Jones, deceased.

III.

Your petitioners charge that about the year 1896, the said Charles F. Winton, deceased, for and in behalf of himself and Robert L. Owen, who was then his sole associate, entered into a certain agreement, or contract, with a very large number of the Mississippi Choctaws, being Indians of the Choctaw blood, who had not removed to the West with the main body of the Tribe, but who, being substantially full-bloods, continued, after the departure of the Tribe to the West, to reside in the State of Mississippi, under

and by the terms of which the said Winton, Owen and their
32 associates were to render services to the entire body of the Mississippi Choctaws in securing for them rights which they claimed within the Choctaw and Chickasaw Nation in the then Indian Territory.

At the time of the making of the contracts by Charles F. Winton with the Mississippi Choctaws in 1896, the Mississippi Choctaws were extremely poor, working at manual labor, making fences, picking cotton, chopping wood, and having no landed estate or personal property worth mentioning. Their children could not attend schools provided for the whites; they were subject to a species of vassalage, not permitted to leave their employers' service while under indebtedness, which operated as a kind of peonage; were not allowed to vote or to exercise the rights accorded the citizens of Mississippi, and were otherwise in a state of helplessness, both financially and socially.

The Choctaw Nation West had previously to 1890, desired all Choctaws brought from East of the River to the Choctaw Country West, for the purpose of making the Choctaw Nation a larger and more important community, but when it became evident by the laws passed in 1893, that the United States had determined to destroy the Choctaw Nation as a government, and distribute the property,

there arose strong opposition to the admission of any more persons, because their admission would diminish the per capita share
33 of those who were living in the West. It was on this account the Choctaws and Chickasaws vigorously opposed the admission to membership of the Mississippi Choctaws through their officials and attorneys and by solicitation and argument before the authorities of the United States.

In consequence of the services rendered by Winton and his associates their present status is entirely changed—the Mississippi Choctaws enrolled on the final roll, approved March 3, 1907, owning property of the value of not less than ten millions of dollars; their social status is entirely changed—they are freely admitted to white schools, and given the social status of white men in the State of Oklahoma. Each family of five persons may be fairly estimated to be worth between thirty and fifty thousand dollars, and this estate was obtained directly by the services of Charles F. Winton and his associates.

The original contract contemplated not only obtaining the estate for the Mississippi Choctaws, but contemplated their removal and the establishment upon their allotments in the Choctaw and Chickasaw Country.

The compensation provided in these contracts was 50% of the lands or moneys ultimately to be recovered. The subsequent hostility of the United States officials and the Choctaw Nation made it impossible to carry out the contracts in their entirety in the
34 matter of removing and establishing the Mississippi Choctaws; so that petitioners were only able to secure the estate in the manner hereinafter recited, but were not able to finance the removal of individuals, or the location of individual Indians upon their homesteads, as originally contemplated; and for that reason the jurisdictional act was sought by the said Winton and his associates, solely to cover compensation for their claim for services rendered to the Mississippi Choctaws as a body, in securing the legislation and the executive action, which resulted in the ultimate establishment of the Mississippi Choctaws in the Choctaw and Chickasaw Nations.

Until the hostility of the United States authorities to the removal of the Mississippi Choctaws demonstrated in 1903 that the removal of the Mississippi Choctaws by private individuals could not be effected, the said Winton and his associates were engaged in such effort, and did, in fact, remove a considerable number of Mississippi Choctaws to the Indian Territory at large expense to themselves; but in view of the jurisdictional act and of the inability of the said Winton and his associates to continue services of that character, no claim is made on account of the expenses so incurred and paid by the petitioners, or for services rendered in that connection, but this claim is limited to compensation for services in the actual securing of the estate.

4. The first important service rendered was the presentation of the claim of the Mississippi Choctaws at Vinita in 1896, in the name of Jack Amos and ninety-seven others to the Dawes Commission, and evidence in support of their claims and arguments based upon the Fourteenth Article of the Treaty of 1830. This was done in person by your petitioner, Robert L. Owen, with the assistance of Charles F. Winton.

In December, 1896, the Dawes Commission, without assigning reasons denied the claim of Jack Amos and the other full-blood Mississippi Choctaws.

Immediately upon this adverse decision Winton and his associates presented to the Senate and House of Representatives, a memorial of the Mississippi Choctaws in December, 1896, as claimants under the Fourteenth Article of the Treaty of 1830. (See Exhibit 1, copies of which duly served upon the officials of the Interior Department, R. L. O. Deposition heretofore filed, page 52.)

A second printed memorial was filed in Congress in January, 1897, setting up the rights of the full-blood Mississippi Choctaws under the Fourteenth Article of the Treaty of 1830, and presented to the Senate and House of Representatives and to the officials of the Government having charge of this matter. (See R. L. O. Exhibit 1, pages 54 to 61.)

36 On September 1, 1897, a further printed memorial was submitted to the Honorable Secretary of the Interior (of twenty-two printed pages), setting up the rights of the full-blood Mississippi Choctaws under the Fourteenth Article of the Treaty of 1830. A number of copies of this memorial were distributed among the officials of the Government for the purpose of emphasizing the legal rights of these people. (See pages 62 to 89, R. L. O., Exhibit 1.)

On February 11, 1897, the Senate of the United States passed a resolution drawn by Charles F. Winton and his associates, calling upon the Interior Department for a report upon the rights of the Mississippi Choctaws.

(See page 91, R. L. O., Exhibit 1.)

On February 15 a report was made by Thomas B. Smith, Acting Commissioner of Indian Affairs, and transmitted to Congress in answer to this resolution, in the Senate, showing the rights of the full-blood Mississippi Choctaws under the Fourteenth Article of the Treaty of 1830 (see R. L. O., Exhibit 1, page 92). This report was based upon the argument submitted by Winton and his associates, and evidence offered by them.

On March 3, 1897, Winton and his associates secured a favorable report from the Committee on Indian Affairs in the House of Representatives in favor of the Mississippi Choctaws.

37 (H. R. Report 3080—54th Congress, 2d Session. R. L. O., Exhibit 1, pages 90 to 97.)

On June 7, 1897, Congress re-enacted the Indian Appropriation

Bill, which had not been approved by President Cleveland, including the following item, to wit:

"That the Commission appointed to negotiate with the Five Civilized Tribes in the Indian Territory shall examine and report to Congress whether the Mississippi Choctaws, under their treaties are not entitled to all the rights of Choctaw citizenship, except an interest in the Choctaw annuities."

(R. L. O., Exhibit 1, page 121.)

This item had been obtained at the request and upon the arguments presented by Winton and his associates during the preceding Session, and as a compromise for a more radical item sought through Senator Walthall. (See Cong. Rec., February 26, 1907, pp. 23 to 37.)

Winton and his associates appealed the case of Jack Amos and others against the Choctaw Nation to the United States Court for the Indian Territory. Judge William H. H. Clayton presiding, who rendered his opinion in this case adverse to the Mississippi Choctaws, affirming the action of the Dawes Commission (see R. L. O., Exhibit 1, pages 460 to 467). This case was appealed by Winton and his associates to the Supreme Court of the United States, which 38 sustained the opinion of Judge Clayton in the case of Stephens vs. Cherokee Nation et al., May 15, 1899. (R. L. O., Exhibit 1, pages 481, 499.)

The brief submitted by Logan and Hutchins on behalf of Winton and his associates, in the Supreme Court of the United States, was presented in the companion case of Emma Nabors, et al. (See R. L. O., Exhibit 1, pages 515 to 541.)

In the meantime your petitioners, Winton and his associates, appeared before the Dawes Commission and submitted arguments and obtained from them a report, which was favorable to the Mississippi Choctaws, and it was submitted to the Congress of the United States on February 2, 1898. (H. R. Doc. 274—55th Congress, 2d Session; R. L. O., Exhibit 1, page 138.)

This report declared that the Mississippi Choctaws had the right to remove to the Choctaw Country, but should be identified under the Fourteenth Article of the Treaty of 1830. Your petitioners immediately took steps to procure this identification—appealed to the Senators and Representatives of Mississippi, especially to Senator Walthall, and Representatives John Allen, John S. Williams and H. D. Money, and they procured the following provision in the Curtis Act of June 28, 1898, for the identification of the Mississippi Choctaws:

39 "Said Commission shall have authority to determine the identity of Choctaw Indians claiming rights in the Choctaw lands under Article Fourteen of the Treaty between the United States and the Choctaw Nation, concluded September 27, 1830, and to that end they may administer oaths, examine witnesses and perform all other acts necessary thereto, and make report to the Secretary of the Interior." (R. L. O., Exhibit 1, page 154.)

The Curtis Act, as originally drawn contained the following provisions:

"No person shall be enrolled who has not heretofore removed to, and, in good faith, settled in the Nation in which he claims citizenship."

(R. L. O., Exhibit 1, page 154.)

This provision would have operated as a complete bar to any claims of the Mississippi Choctaws to either lands or funds of the Choctaw Nation. It became of the greatest importance to provide an exception for the Mississippi Choctaws, and your petitioners drafted and obtained the passage of the following item, to wit:

"Provided, however, that nothing contained in this Act shall be so construed as to militate against any rights or privileges which the Mississippi Choctaws may have under the laws of, or the treaties with, the United States."

(R. L. O., Exhibit 1, page 154.)

40 Immediately upon the passage of this Act Charles F. Winton sent a circular letter to the Mississippi Choctaws (sending out a very great number of copies), that they might be fully informed of what had been done, as follows, to wit:

"NEWKIRK, O. T., July 1, 1898.

"To the Mississippi Choctaws:

"For your information I enclose report No. 3080, H. R., 54th Congress, 2d Session. The Indian Committee of House of Representatives decided favorably to the Mississippi Choctaws, under date of March 3, 1897. This report was obtained for you by active labor, first hunting up the facts, and then getting Senator Walthall to pass a resolution through the Senate to get the information (Sen. Doc. 129, 54th Congress, 2d Session), and then soliciting Mr. Allen, of Mississippi, to prepare it. By the help of Mr. Williams and Senator Walthall and Mr. Allen the following item was put in the Indian appropriation act of June 7, 1897:

"That the Commission appointed to negotiate with the Five Civilized Tribes in the Indian Territory shall examine and report to Congress whether the Mississippi Choctaws, under their treaties, are not entitled to all the rights of Choctaw citizenship, except an interest in the Choctaw annuities."

"This Commission, January 28, 1898, submitted their report, copy herewith (H. R. Doc. 274, 55th Cong., 2d Sess.), deciding that

41 the Mississippi Choctaw, to avail himself of the 'privileges of a Choctaw citizen,' must prove himself of a descendant of a Fourteenth Article Claimant, and in good faith join the Choctaws west with the intent to become one of the citizens of the Nation.

"In bill H. R. 8581 it was provided June, 1898, that—

"Said Commission shall have authority to determine the identity of Choctaw Indians claiming rights in the Choctaw lands under article fourteen of the treaty between the United States and the Choc-

taw Nation, concluded September 27, 1830, and to that end they may administer oaths, examine witnesses, and perform all other acts necessary thereto, and report to the Secretary of the Interior."

"It provides further that—

"No person shall be enrolled who has not heretofore removed to and in good faith settled in the Nation, in which he claims citizenship; provided, however, that nothing contained in this act shall be so construed as to militate against any rights or privileges which the Mississippi Choctaws may have under the laws of or the treaties with the United States."

"Not only the Dawes Commission found that the Mississippi Choctaws would have to move to Indian Territory and establish residence in good faith there, but the United States Court, Judge Clayton presiding, July 1, 1897, found that only those Choctaws who had previous to July 1, 1897, settled in good faith in the Choctaw
42 Nation were entitled to citizenship.

"By special authority of an item in the Indian appropriation bill allowing an appeal from this decision, I shall on your behalf make an appeal to the Supreme Court of the United States to test the question of your rights.

"In making up the roll of Mississippi Choctaws it is of the highest importance to furnish proof that each claimant is a descendant of a fourteenth article claimant; for this reason I have secured the list of such claimants, and will make it available to my clients as soon as practicable.

"The Dawes Commission will probably take evidence this fall and enroll all who are truly entitled.

"Yours very respectfully,

"C. F. WINTON,
Newkirk, O. T."

Thereupon your petitioners furnished to the Dawes Commission to enable them to perform the duty of identification, an alphabetical index of sixteen thousand Choctaw names, after each name being from one to a dozen references to the page upon which the record of that individual could be found in the case of the Choctaw Nation against the United States, which contained a record of about seventeen hundred pages and referring to other records.

Your petitioners appeared in person before the Dawes Commission in Mississippi, sending runners all over Mississippi, at
43 their own expense, to bring the Mississippi Choctaws before the Dawes Commission, and assisted that Commission in every way possible to ascertain the truth.

On March 10, 1899, a roll of Mississippi Choctaws was submitted by the Dawes Commission, containing 1,922 names of identified Fourteen Article claimants (see R. L. O., Exhibit 1, page 509.) This report was approved by the Secretary of the Interior on August 3, 1899, in a letter containing the following words:

"Prima facie, the persons appearing on said schedules, containing the names of the Mississippi Choctaws, entitled to enrollment as adopted Indians, would be entitled to such enrollment, subject,

however, to the final action of the Department when the final rolls shall be submitted by the Commission for the approval of the Secretary."

(H. R. Doc. 426—56th Congress, 1st Session. R. L. O., Exhibit 1, page 186.)

Over the resolute protest of your petitioners the Choctaw authorities persuaded the Interior Department to disapprove this entire roll on March 3, 1907, thus depriving a large number of these people of their rights.

On February 7, 1900, your petitioners, on behalf of the Mississippi Choctaws, drew up a memorial and petition to the Senate and House of Representatives, which was presented by Mr. Williams, of Mississippi, praying the right of the Mississippi Choctaws to be heard in Court, and the bill for this purpose was passed through the House of Representatives, giving the Mississippi Choctaws the right to appear in Court, but the said bill failed to pass the Senate.

Your petitioners secured the passage of a bill through the Senate, giving the Mississippi Choctaws the right to appeal to the Courts for the determination of the rights as members of the Choctaw Nation, but that bill failed to pass the House, because of the hostility of the Choctaw authorities and the activity of their attorneys.

The Dawes Commission was instructed to continue the work of identification of the Mississippi Choctaws under letter of July 25, 1899. (R. L. O., Exhibit 1, page 200.)

Your petitioners, thereupon, on April 4, 1900, submitted a memorial to the Senate and House of Representatives, which was presented in the Senate by Senator Stewart, Chairman of the Committee on Indian Affairs (Senate Document 263, 56th Congress, 1st Session—R. L. O., Exhibit 1, page 202).

In this memorial your petitioners requested the following enactment:

"Provided, that any Mississippi Choctaw duly identified and enrolled as such by the United States Commission to the Five Civilized Tribes shall have the right at any time prior to the approval of the final rolls of the Choctaw and Chickasaw by the Secretary of the Interior, to make settlement within the Choctaw and Chickasaw Country, and on proof of the fact of bona fide settlement they shall be enrolled by the said United States Commission and by the Secretary of the Interior as Choctaws entitled to allotment."

(R. L. O., Exhibit 1, page 202.)

This request was supported by argument and evidence, and was enacted into law substantially on May 31, 1900, in the following language, to wit:

"Provided, that any Mississippi Choctaw duly identified as such by the United States Commission to the Five Civilized Tribes shall have the right at any time prior to the approval of the final rolls of the Choctaws and Chickasaws by the Secretary of the Interior, to

make settlement within the Choctaw and Chickasaw Country, and on proof of the fact of bona fide settlement, may be enrolled by the said United States Commission, and by the Secretary of the Interior as Choctaws entitled to allotment."

(R. L. O., Exhibit 1, page 227.)

The attorneys of the Choctaw Nation procured, however, an amendment to this provision, as follows, to wit:

- 46 "Provided, further, that all contracts or agreements, looking to the sale or encumbrance, in any way, of the lands to be allotted to said Mississippi Choctaws, shall be null and void."
 (R. L. O., Exhibit 1, page 227.)

This provision was intended to weaken the Mississippi Choctaws in the matter of their representation and was intended to discourage your petitioners and prevent them from continuing to render services to the Mississippi Choctaws. Your petitioners, nevertheless, persisted in the service of their clients until the completion of the final rolls, March 3, 1907.

On January 29, 1901, your petitioners obtained a favorable report upon H. R. 4158 (H. R. Report 2522, 56th Congress, 2d Session—R. L. O., Exhibit 1, page 212), recommending the passage of the bill, the object of which was to enable the Mississippi Choctaws to assert in the Court of Claims their rights under the Fourteenth Article of the Treaty of 1830. This bill passed the House, but failed to pass the Senate.

Your petitioners on all occasions, before the Committees of Congress, before the Interior Department, before the Indian Office, before the Attorney-General, before the Dawes Commission and before the Courts, did everything in their power to protect the Mississippi Choctaws at petitioners' expense, expending approximately forty thousand dollars during the ten years of their service, for which they have received no return; their compensation not only being contingent upon success, but the danger of failure to recover
 47 for their clients, and the danger of recovering their fees, even after their clients' recovery, being extremely hazardous.

On February 7, 1901, the Dawes Commission and the Choctaw and Chickasaw Commissioners signed an agreement to be submitted to Congress February 23, 1901. (H. R. Document 490—56th Congress, 2d Session.—R. L. O., Exhibit 1, pages 244 to 259.)

By Sections 13, 14 and 15 it was provided in the first draft agreed to by the Choctaw and Chickasaw Commissioners, that the Mississippi Choctaws' schedule of March 10, 1899, should be approved and the persons thereon recognized for enrollment and allotment; but in the Interior Department the hostility of that Department to the Mississippi Choctaws was exhibited by the fact that it caused Section 13 to be redrafted in such a way as to leave out the ratification of this schedule of March 10, 1899, to which the Commissioners of the Choctaw and Chickasaw Nations had already agreed, and insert the words, "All persons duly identified"; and thereafter on the theory that the Mississippi Choctaws on that schedule had not been "duly

identified," the Secretary of the Interior disapproved the entire roll, thus depriving many hundreds of Mississippi Choctaws of the rights found due them by the report of March 10, 1899, and which had been agreed to by the Commissioners representing the Choctaw and Chickasaw Nation-, thus annulling the actual agreement of February 7, 1901, of the Choctaw and Chickasaw Nations themselves. Other changes will be observed in the redrafting of these sections, injurious to the Mississippi Choctaws. (R. L. O., Exhibit 1, pages 255 and 248.)

The Secretary of the Interior submitted this modified agreement, notwithstanding it did not have the approval of the Choctaw and Chickasaw Commissioners, although it had their names printed on the bottom of the agreement, and this, his own report, shows (R. L. O., Exhibit 1, page 255) ; as he states in his report that the representatives of the two tribes do not assent to the change made in Article 8. It is assumed that their consent was obtained to the redrafting of the Mississippi Choctaw item in Section 13, the injury of the Mississippi Choctaws.

Your petitioners resisted the passage of this agreement because of the injury done to the Mississippi Choctaws and demanded a hearing; this demand caused the failure of the passage of this agreement and resulted in an extension of the time in which the Mississippi Choctaws might remove by over eighteen months from February 1901 to January 1, 1903.

In 1902, July 1st, Congress passed the so-called Choctaw and Chickasaw agreement, in which by Sections 41, 42, 43 and 44 various conditions were imposed on the Mississippi Choctaws injurious to them.

49 Your petitioners resisted these petitions in vain, both before the Interior Department and before the Committees of Congress, which had the same for consideration. These conditions required the Mississippi Choctaws—

First, to remove within six months after personal identification—a condition with which very many of them were unable to comply because of their known contractual relation to their employers of Mississippi; and their well-known intellectual and financial weakness;

Second, they were required within twelve months after the date of identification to submit proof of their removal—a requirement which many ignorant full-bloods would easily neglect, and thus bar themselves of the right, even after they had been identified and after they had removed to the Choctaw Country;

Third, they were required by Section 42, to continuously reside for three years upon the land of the Choctaw and Chickasaw Nation. They were further required to make due proof of such continuous bona fide residence before such officer as might be designated by the Secretary of the Interior. [This section was construed by the attorneys of the Choctaw Nation to require each individual to reside upon the land allotted to him, a contention which was defeated be-

50 cause it was too utterly unreasonable to ask that a married woman, a minor, or an insane person, should live away from the husband, father or curator.]

This condition of Section 42 would obviously exclude any Mississippi Choctaw, even if he had removed within six months, as required by Section 41, and even if he had, within twelve months from the date of his identification, made proof of his removal within six months, unless he continuously resided in the Choctaw Country for three years and furnished proof thereof.

Section 44 imposed a further condition that within four years after his enrollment, if a Mississippi Choctaw failed to make proof of such continuous, bona fide residence for the three years prescribed, even if he had complied with every other condition, he should be deemed to have acquired no interest in the lands allotted to him. These grossly unjust conditions were intended to deprive, and would have deprived, a large number of Mississippi Choctaws of their rights, even after they had complied with every previous condition, if it had not been for the act of July 21, 1906, procured by your petitioners which eliminated these unfair conditions and prevented any discrimination against the Mississippi Choctaws. (See R. L. O., Exhibit 1, page 332.)

The bill of July 1, 1902, known as the Choctaw Chickasaw Agreement, passed over the protest of your petitioners, and in spite of every effort that they could make for its proper amendment.

51 While this matter was pending your petitioners, on April 24, 1902, submitted a memorial to the Senate and House of Representatives and caused its reference to the Committee on Indian Affairs, demanding an amendment protecting the Mississippi Choctaws against these injurious provisions. (Senate Document 319, 57th Congress, 1st Session. R. L. O., Exhibit 1, page 281.)

Your petitioners argued the matter before the Committees, but were unable to overcome the influence of the Interior Department and of the Dawes Commission, which supported the contention of the Interior Department.

By the Indian Appropriation Act of July 1, 1902, it was provided that three hundred and twenty acres of land should be set apart as an allotment to each member of the Choctaw and Chickasaw Nation. (See R. L. O., Exhibit 1, page 301.)

On March 15, 1904, your petitioners, not having been able to obtain relief for the Mississippi Choctaws from the onerous conditions imposed by the Act of July 1, 1902, submitted a memorial to the Senate and House of Representatives of the United States, praying for an extension of time within which their right to remove to the Choctaw Country might be permitted, and for the passage of House Bill 13,560, and calling attention to the bill inequity brought by the attorneys of the Choctaw Nation against the Dawes

52 Commission to forbid them to enroll Mississippi Choctaws, who had, in the slightest degree, departed from the requirements heretofore complained of.

On June 21, 1906, your petitioners drafted and procured the passage of the following item, to wit:

"No distinction shall be made in the enrollment of full-blood Mississippi Choctaws, who have been identified by the United States Commission to the Five Civilized Tribes, and who had removed to the Indian Territory prior to March 4, 1906, and who shall furnish proof thereof."

(See Indian Appropriation Act—Five Civilized Tribes—approved June 21, 1906; R. L. O., Exhibit 1, page 382.)

This final Act was of extreme importance in protecting the Mississippi Choctaws from the technical construction invoked by the Choctaw attorneys in their bill in equity, and in this manner the previous services of your petitioners of the Mississippi Choctaws were perfected, and made thoroughly effective, in their behalf wherever they had actually removed to the Choctaw and Chickasaw Country prior to March 4, 1906.

Your petitioners were unable to prevent the Interior Department and the Dawes Commission from leaving the Mississippi Choctaws on the schedule of 1899 in a state of uncertainty as to whether they were entitled to remove under the schedule of identification
53 of 1899, because the identification by the Dawes Commission without the approval of the Secretary of the Interior, was held for eight years by the Interior Department as indeterminate, and those who were identified on the roll of March 10, 1899, although prima facie approved by the Secretary of the Interior, were finally rejected by the Secretary, after that roll of identification had been in his office for eight years, less seven days. This treatment of the Mississippi Choctaws led to the exclusion of about one thousand of their number, who were identified by the Dawes Commission, and whose enrollment had been agreed to by the Commissioners of the Choctaw and Chickasaw Nations in the agreement submitted to the Department of the Interior of February 7, 1901.

V.

5. Your petitioners further respectfully show that inasmuch as the original purpose of your petitioners as to the Mississippi Choctaws, including their personal removal to, and settlement in, the lands of the Choctaw and Chickasaw Nations, could not be effectuated, they do not claim that they are entitled, by reason of the services hereinbefore shown to have been rendered, to one-half of the value of the lands or other property acquired by the Mississippi Choctaws, as the
54 result of your petitioners' services but they respectfully aver that, on account of such services, they are entitled to a reasonable compensation.

They aver and charge that the lands allotted in the Choctaw and Chickasaw Nation to the Mississippi Choctaws are admirably adapted for agricultural purposes; that an average allotment of three hundred and twenty acres is worth, at a fair valuation, four thousand dollars; that the membership allotments conferred upon the said Mississippi Choctaws by reason of the petitioners' services, in the general or common property of the Choctaw and Chickasaw Nation,

are each of at least the value of two thousand dollars; so that they aver and charge the value of all rights and properties acquired by each of the Mississippi Choctaws, by reason of petitioners' services, equals at least the sum of six thousand dollars.

They further aver and charge that, as shown by the certified copy of the final roll of Mississippi Choctaws, transmitted to this Court in this cause of May 18, 1907, there were enrolled 1,441 persons and under the Act of July 1, 1902, 137 persons, new born, making a total of 1,578 Mississippi Choctaws, who upon the valuation of six thousand dollars per individual, for the rights acquired by reason of your petitioners' efforts, represent a valuation of more than nine millions of dollars.

Your petitioners aver and charge that your petitioners alone are responsible for presenting the rights of the Mississippi Choctaws; that these rights were resisted by the Dawes Commission and by the Choctaw authorities after they were presented, and except for the continuous and persistent efforts of your petitioners, no Mississippi Choctaw would have ever received a dollar or an acre of land.

6. Your petitioners further charge that by Act of Congress, approved May 29, 1908, and by section 27 thereof it is provided—

"That the Court of Claims is hereby authorized and directed to hear, consider and adjudicate the claims against the Mississippi Choctaws, of William N. Vernon, J. S. Bounds and Chester Howe, their associates or assigns, for services rendered and expenses incurred in the matter of the claims of the Mississippi Choctaws to citizenship in the Choctaw Nation, and to render judgment thereon on the principle of quantum meruit in such amount or amounts as may appear equitable and justly due therefor, which judgment if any shall be paid from any funds now or hereafter due such Choctaws as individuals by the United States. The said William N. Vernon, J. S. Bounds and Chester Howe are hereby authorized to intervene in the suit instituted in the said Court under the provisions of Section nine of the Act of April twenty-sixth, nineteen hundred and six, in behalf of the estate of Charles F. Winton, deceased; *Provided*, That

the evidence of the intervenors shall be immediately submitted; And provided further, That the lands allotted to the said Mississippi Choctaws are hereby declared subject to a lien to the extent of the claims of the said Winton and of the other plaintiffs authorized by Congress to sue the said defendants, subject to the final judgment of the Court of Claims in the said case. Notice of such suit or intervention shall be served on the Governor of the Choctaw Nation, and the Attorney General shall appear and defend the said suit on behalf of the said Choctaws. (35 Stat. L. 457.)"

They charge that the Winton referred to in the quoted paragraph is the Charles F. Winton, for whose services and the services of whose associates, this original suit was authorized.

Names of the defendants in this proceeding against whom your petitioners are entitled to a judgment, and a description of the lands

upon which your petitioners are entitled to a lien in this proceeding, will be found in the schedule showing lands selected by enrolled Mississippi Choctaws, filed in this court, submitted by letter of James Rudolph Garfield, Secretary, on May 18, 1907, described as a "List of Mississippi Choctaws who have selected land in allotment, with their roll numbers and description of their selections," beginning with roll No. 1, William Hancock Hussey, to whom was allotted the following lands:

57

Homestead.

The W. $\frac{1}{2}$ of the E. $\frac{1}{2}$ of the N. E. $\frac{1}{4}$,
 S. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$,
 S. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$,
 N. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ of S. E. $\frac{1}{4}$,
 Sec. 7, T. 4 N., R. 3 E.

Exclusive of Homestead.

N. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$,
 S. W. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$,
 E. $\frac{1}{2}$ of E. $\frac{1}{2}$ of N. W. $\frac{1}{4}$,
 N. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$,
 S. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ of Sec. 7,
 S. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ of
 Sec. 8, T. 4 N., R. 3 E.,
 W. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$,
 Sec. 13, T. 5 N., R. 2 E.,

and including 1441—No. 534 and No. 535 on said roll, and including also all persons named under the list of new-born Mississippi Choctaws, beginning on page 208 and continuing to page 227 of said roll, the last name thereon being No. 137, the whole of which purports to be and is for the purposes of this petition, admitted to be a complete roll of the Mississippi Choctaws, to whom allotments of land in the Choctaw and Chickasaw Nation have been made, and upon whose said allotments as described in said exhibit, your petitioners are entitled to and claim liens to secure the payment of such judgment as may be rendered in this cause.

58

7. Petitioners further aver and charge that under the act conferring original jurisdiction of this cause upon this Honorable Court, as hereinbefore set out in paragraph one, your petitioners are entitled to receive payment of such judgment as this court may award, from any funds now or hereafter due such Choctaws by the United States; they further charge that they also, under the act of Congress cited in paragraph six of this petition, are entitled to and have a lien on the lands of the defendants, the Mississippi Choctaws, to whom allotments have been made as shown upon the certified copy of the roll hereinbefore referred to secure the payment of such judgment as this court may award.

Wherefore, in consideration of the premises, your petitioners pray

that they may have judgment for a sum deemed by this Honorable Court to be a fair and reasonable compensation for the services hereinbefore recited, and that the decree provide for the payment of such judgment out of such funds as may be then due from the United States to such Choctaws, and that they may have the further judgment or decree of the court, declaring the said judgment to be a lien upon the lands of the said Mississippi Choctaws whose names appear upon the said certified copy of the said roll, in which said lands are described; and to that end, and to the end that your petitioners may receive their compensation, such as shall be here adjudged, that all proper orders and decrees be made and entered.

And your petitioners will ever pray.

WILLIAM H. ROBESON,
Attorney for Petitioners.
ROBERT L. OWEN,
Appearing for Himself.

UNITED STATES OF AMERICA,
District of Columbia, ss:

This day personally appeared before me, James K. Jones, and having been first sworn, deposes and say- I am the administrator of James K. Jones, deceased, and am one of the petitioners in the foregoing petition; I have read the petition carefully; the statements therein made, of my personal knowledge, are true; those made on information and belief, I believe to be true.

WM. H. ROBESON.

Subscribed and sworn to before me this 16th day of November, 1911.

[SEAL.]

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

* * * * *

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Intervening Petition of William N. Vernon.

The original intervening petition of William N. Vernon, was filed by leave of Court on July 10, 1908. Subsequently to-wit, by leave of Court on Feb. 24, 1911, the petition was amended so that it now reads as follows:

In the Court of Claims.

No. 29,821.

The ESTATE OF CHARLES F. WINTON, Deceased, and Others,

vs.

JACK AMOS and Others, Known as the "Mississippi Choctaws".

Intervening Petition as Amended of William N. Vernon.

To the Honorable Chief Justice and Judges of the Court of Claims, your petitioner respectfully represents:

First. That he is a citizen of the United States residing at Kiowa, Oklahoma; that he files this petition in his own right, and that he is the identical William N. Vernon named and referred to in Section 27 of the Act of Congress of May 29, 1908 (Public 156) said act being as follows:

"Sec. 27. That the Court of Claims is hereby authorized and directed to hear, consider, and adjudicate the claims against the Mississippi Choctaws of William N. Vernon, J. S. Bounds and Chester Howe, their associates or assigns, for services rendered and expenses incurred in the matter of the claims of the Mississippi Choctaws to citizenship in the Choctaw Nation and to render judgment thereon on the principle of quantum meruit in such amount or amounts as may appear equitable and justly due therefor, which judgment, if any, shall be paid from the funds now or hereafter due such Choctaws as individuals by the United States. The said William N. Vernon, J. S. Bounds and Chester Howe are hereby authorized to intervene in the suit instituted in said court under the provisions of Section nine of the Act of April twenty-six, nineteen hundred and six, in behalf of the estates of Charles F. Winton, deceased: Provided, That the evidence of the interveners shall be immediately submitted: And Provided Further, That the lands allotted to the said Mississippi Choctaws are hereby declared subject to a lien to the extent of the claims of the said Winton and the other plaintiffs authorized by Congress to sue the said defendants, subject to the final judgment of the Court of Claims in the said case. Notice of such suit or intervention shall be served on the Governor of the Choctaw Nation, and the Attorney General shall appear and defend the said suit on behalf of the said Choctaws."

Second. That your petitioner is a native of Mississippi and knew of the claim of the Mississippi Choctaw Indians in that state to rights in the Choctaw Nation in the Indian Territory, and in 1901 he entered into contracts with certain Mississippi Choctaw Indians residing in Mississippi under which he agreed to assist said Indians to remove to the Choctaw Nation in the Indian Territory and to assist them in obtaining lands, moneys and other rights under the claims of the Mississippi Choctaws to citizenship in the Choctaw Nation believed to be due said Indians both by your petitioner and the Indians who were parties to such contracts.

Third. That the condition of the Choctaw Indians who were parties to the contracts made with your petitioner in 1901 and later dates was that of extreme poverty. They were without money or means from which money could be derived to pay for transportation from Mississippi to the Choctaw Nation, or to buy food or clothing necessary to sustain and clothe themselves and their families, after their arrival in the nation; and the contracts made by your petitioner were each and every one made in good faith for the purpose of aiding and the carrying out of the law and protection of the contracting Indians. That these people were tenants in Mississippi, and under the laws of that State, it was a misdemeanor to secure the removal of persons situate as they were without the payment of any amounts due the landlord and that they were so indebted in varied amounts which were necessarily paid prior to this removal.

Fourth. That prior to the enactment of the Act of Congress of July 1, 1902, the same being the supplemental agreement between the Choctaw Indians and the United States, your petitioner moved from Mississippi to the Choctaw Nation at his own expense one Choctaw Indian and in contemplation of further removals, under his contracts, spent a large amount of time and considerable sums of money in ascertaining where lands could be obtained in said Choctaw Nation for the benefit and use of said Mississippi Indians; it being a fact that nearly all the good agricultural lands in the Choctaw Nation were claimed by individuals who, by reason of improvements thereon or the enclosure of same by fences, made a claim to a right of possession and prevented the location of any other individuals thereon, without a purchase of the improvements and of their claims thereto, and it was the custom in the Choctaw Nation at that time to transfer said improvements and said right of possession by Bills of Sale; it being a further fact that under the rules and regulations of the Department of the Interior, as enforced by the Commission to the Five Civilized Tribes, commonly known as the Dawes Commission, that each legal subdivision had been inspected by officers of said Department and the improvements thereon listed by description, and the name of the alleged owner, and each person applying for land was obliged to show that he or she had purchased said improvements from said owner, as listed, or that the same were excess holdings, and to state under oath that no person other than the said applicant had a superior right of possession, under improvements to those of the applicant.

And by reason of said facts, it became and was necessary to ascertain definitely where there were vacant and unimproved land commonly termed "public domain" or "national domain" (meaning the unappropriated tribal lands of the Choctaw Nation) or to obtain by purchase under the Bills of Sale or by gift, or grant, the rights of possession, so that said Mississippi Choctaw Indians might secure allotments and obtain title to their just and legal portion of the Choctaw Nation, and the expenses so incurred are given on a schedule marked "General Expenses" "Exhibit C" and hereunto attached and made a part thereof.

Fifth. That under the provisions of Sections 41, 42, 43 and 44 of the act of Congress of July 1, 1902, the Mississippi Choctaws residing in Mississippi who were included within the terms of said act were obliged to move to the Choctaw Nation within six months from the date of their identification or lose their estates in said nation, and in compliance with the terms of his contract your petitioner moved from the State of Mississippi to the Choctaw Nation, Indian Territory, between 60 and 70 Choctaw Indians, the names of whom are hereunto attached upon a schedule marked "Exhibit A", and made a part of this petition. That in moving said Indians your petitioner paid all of the expenses which included the costs for travel from their former homes to the railway station in Mississippi, railroad fare from their nearest station to Meridian, Mississippi, from which point a common rate of railroad fare to points in the Indian Territory had been obtained, railroad fare from Meridian, Mississippi, to Kiowa Indian Territory, (now Oklahoma),
76 sustenance enroute, and incidental expenses including clothing, medicines and care, and including the expenses of an interpreter and a man to look after the wants of these people while traveling; that after arriving in Kiowa, Indian Territory, now Oklahoma, your petitioner provided houses, food, necessary furniture and other things for the Mississippi Choctaws so moved, and purchased rights of possession to lands on some of which houses had theretofore been erected, including fences and other improvements and on others of which houses and other improvements were afterwards erected, all at the expense of your petitioner, and that your petitioner furnished or caused to be furnished, general supplies consisting of food, clothing and household necessities to said Mississippi Choctaw Indians and the necessary money to permit said Indian to appear before the Dawes Commission and make proof of their establishment of residence in Indian Territory, together with their witnesses who were required to so appear, and assisted the Indians in allotting the lands so purchased by furnishing money to defray expenses to land office and resurvey by him under his contracts, and purchased for them wagons, teams, plows and agricultural implements, in some cases breaking the lands to the end that the Indians might become self-sustaining and the policy of government be carried out, furnishing seed where needed and paying for medical attendance for such parties when sick, and the funeral expenses for those who died, and that said expenditures were charged on book

accounts, the ledger balances of which are given on a schedule hereunto attached and marked "Exhibit B" and made a part of this petition. Said schedule being approximate in amount based on the best information available at the time and place of verifying the petition. A complete schedule will be submitted with the testimony for the information of the Court.

Sixth. That your petitioner before undertaking this work for the Mississippi Choctaws was a practicing lawyer in Rockwall
77 County, Texas, with a practice extending over a large portion of said State, and that the demands upon his time and the labor of caring for and protecting the Mississippi Choctaws compelled him to relinquish his practice and caused him to remove to the Choctaw Nation where he could properly look after the interests of the parties with whom he had formed contractual relations and to whom he had promised the aid and assistance, not only of money, but of his abilities as a business man, and a lawyer, and that he gave to said Mississippi Choctaws a large portion of his time, his energies, and his abilities, from the time of the making of his original contract up to date hereof; but that after the disavowment of responsibility under said contracts by said Indians, which disavowment or denial has been by refusal to keep either the letter or spirit thereof made at different times by different individuals, he engaged in other business and he therefore alleges that his services were reasonably worth the sum of \$2,500 per year, beginning July 1, 1902, and extending to July 1, 1905.

Seventh. That during the month of September, 1902, your petitioner met W. P. Donnel, who, at that time, was minister in charge of the Choctaws for the M. E. Church South, at Tahlechula, Miss., and employed him to assist in the removal of the Mississippi Choctaws from Kemper county, Mississippi, to Kiowa, Indian Territory, now Oklahoma; that W. P. Donnell continued in this service from said date in September, 1902, to February of 1903; that said services were reasonably worth the sum of \$100 per month; during that time the said W. P. Donnel devoted his entire time to the Mississippi Choctaws and was thereby incapacitated for other labor; that under the contract made with your petitioner and the said Donnel, said agreement being a verbal agreement, said Donnel was to be paid for such service at the time your petitioner received payment under his contracts from the Mississippi Choctaws; that
78 no such payment having been made, nothing has been paid to said Donnel, and said claim for services is separate and apart from the other items in this petition and is justly due for service rendered, the amount hereof being six hundred dollars.

Eighth. That by reason of your petitioner's expenditures of money in purchasing valuable lands and improvements subsequently allotted to these Mississippi Choctaws, now in their possession and on which many of them reside, and by reason of his business ability exercised on their behalf and in their interest, said Mississippi Choctaws now have allotments of much greater value than the ordinary Mississippi Choctaw allotments; exceeding in value by many thou-

sands of dollars either the appraised value of allotment or the average value of the Mississippi Choctaw allotment and that the estate so obtained is directly due to the money furnished, the judgment exercised by your petitioner under his contract.

Ninth. That none of the sums of money heretofore mentioned have been paid or refunded by the Mississippi Choctaw Indians, that none of them are entitled to credits, except such as appear on the schedule of account attached to this petition; that the sums were expended and accepted under contract which the said Mississippi Choctaw Indians as individuals have repudiated by act, and by failure to comply with the terms thereof, and your petitioner has at all times acted in good faith, in strict compliance with what he believed, and now believes to be the law and in justice to the defendants individuals.

Tenth. That your petitioner is informed and believes the individuals named in the schedule made a part of this petition are a portion of the Mississippi Choctaws from whom the petitioner, the estate of Charles F. Winton, seeks a recovery in the original
79 petition filed in this case. That your petitioner is entitled for the reason set forth herein to a lien on the lands and money belonging to the individuals so named prior to any other person or persons whomsoever, for the reason that the lands so held were acquired with the money furnished by him and are now the property of said individuals by reason of the expenditure of the money and the performance of the services as set forth herein, and that your petitioner, as he believes, has an equitable right of intervention in said suit, irrespective of the jurisdictional act set forth herein.

Wherefore, Your petitioner prays:

First. That this petition may be filed and docketed as an intervening petition on case number 29,821 as referred to herein.

Second. That he may have judgment against the individuals named in the schedule attached and made part of this petition for the respective amounts expended upon their behalf, and that accounts carried in the names of families may be prorated among the members of said families.

Third. That he may have judgment for the services rendered, and that in equity the same shall be prorated between the individuals receiving the benefit thereof, and that interest may be allowed and computed from the dates shown in the schedule at the rate of 6 per cent. per annum for the cash expended and advanced; that the judgments shall be decreed a lien, as provided by the jurisdictional act; and for such other and further relief as to the court, in its wisdom, may seem just and equitable, and your petitioner will ever pray, etc.

WILLIAM N. VERNON,
Petitioner.

HOWE & WRIGHT,
Attorneys for Petitioner.
W. S. FIELD,
Of Counsel.

80 STATE OF OKLAHOMA,
County of —, ss:

William N. Vernon being duly sworn on oath states that he has read the foregoing petition by him subscribed; that he is the petitioner named therein; that the facts stated in said petition as being of his knowledge are true and the facts stated upon information and belief he verily believes to be true.

WILLIAM N. VERNON.

Subscribed and sworn to before me this 30th day of June, 1908.

[SEAL.]

JNO. O. TOOLE,
County Clerk, Pittsburg County, Oklahoma.

81 AMENDED EXHIBIT "A."

(Filed Feb. 24, 1911.)

List of enrolled Mississippi Choctaws, against whom petitioner claims, giving names of the heads of families and the names of the other members thereof and showing the total claim against each family, as a whole.

Roll. No.	Name.	Age.	Sex.	Blood.	
775	Isaac, Wilson	34	M.	Full	1
776	" Siney	29	F.	"	2
777	" Sift	12	M.	"	3
778	" Ellen	7	F.	"	4
779	" Jim	5	M.	"	5
780	" Lela	2	F.	"	6

Entire claim against the family, to be proportioned . . \$1,726.65

608	Billy, Jack	53	M.	Full	7
609	" Leanna	58	F.	"	8
610	" Minnie	17	F.	"	9
611	" Hettie	15	F.	"	10
612	" Camille	7	F.	"	11

Entire claim against the family to be proportioned . . . \$606.67

164	Willis, John	38	M.	Full	12
165	" Hickman	19	M.	"	13
166	" Margaret	17	F.	"	14

82

167	" Lillie	8	F.	"	15
168	" Fannie	7	F.	"	16
169	" Elma	3	F.	"	17
170	" Sam Houston	1	M.	"	18

Entire claim against the family, to be proportioned . . . \$601.47

613	Sturdevant, Charley	60	M.	"	19
	Entire claim against this individual.....				\$1,214.58
319	Willis, Riley	26	M.	Full	20
320	" Lena (wife)	24	F.	"	21
	Entire claim against the family, to be proportioned...				\$578.00
558	Thompson, Ben	36	M.	Full	22
559	" Martha	33	F.	"	23
560	" Leona	15	F.	"	24
561	" Thomas	11	M.	"	25
562	" Maggie	5	F.	"	26
322	Reese, Salina	21	F.	"	27
323	" Manuel	2	M.	"	28
	Entire claim against the family, to be proportioned...				\$1,521.68
555	West, John	25	M.	"	29
	Entire claim against this individual.....				\$57.00
639	Bull, Houston	20	M.	"	30
	Entire claim against this individual.....				\$67.00
83					
19	Dansby, Jacob	39	M.	Full	31
	Entire claim against this individual.....				\$38.95
83	Golden, Abe	26	M.	Full	32
	Entire claim against this individual.....				\$764.93
20	Billey, Cornelius	15	M.	Full	33
	Entire claim against this individual.....				\$58.96
250	Bob, Morris	43	M.	Full	34
1357	Guss, Leanna, (wife)	42	F.	"	35
	Entire claim against the family, to be proportioned...				\$545.68
1367	Bob, Alex	57	M.	Full	36
1368	" Edna (wife)	47	F.	"	37
	*Entire claim against the family, to be proportioned....				\$87.11
625	Dansby, Isom	53	M.	Full	38
	Entire claim against this individual.....				\$891.37
311	Billy, Alice	28	F.	Full	39
312	" Nannie	5	F.	"	40
313	" Clay	4	M.	"	41
	Entire claim against the family, to be proportioned....				\$29.30
624	Phillip, Tom	21	M.	Full	42
	Entire claim against this individual.....				\$268.33

84

861	Wilson, Willie	30	M.	Full	43
	Entire claim against this individual.....				\$32.33
607	Dansby, Lewis	32	M.	Full	44
	Entire claim against this individual.....				\$83.20
147	Guss, Nancy	20	F.	Full	45
148	" Sina	16	F.	"	46
	Entire claim against the family, to be proportioned...				\$495.55
967	Lewis, Sam	30	M.	Full	47
968	" Pollie	27	F.	"	48
969	" Jim	11	M.	"	49
970	" Dorano	7	M.	"	50
971	" Ump	5	M.	"	51
	Entire claim against the family, to be proportioned...				\$261.04
706	Jacob, Charley	34	M.	Full	52
707	" Louisa	31	F.	"	53
708	" Ebbie	1	F.	"	54
	Entire claim against the family, to be proportioned...				\$175.81
40	In-pun-nubbee, Mingo	60	M.	Full	55
	Entire claim against this individual.....				\$88.65
240	York, Taylor	17	M.	Full	56
	Entire claim against this individual.....				\$83.65
85					
845	Gibson, Ben	50	M.	Full	57
	Entire claim against this individual.....				\$61.65
134	Wilkerson, Sam (or John)	32	M.	Full	58
	Entire claim against this individual.....				\$15.40
592	Simon, Albert	26	M.	Full	59
	Entire claim against this individual.....				\$10.00
159	Phillip, Ples Tinsley	20	M.	Full	60
	Entire claim against this individual.....				\$75.00
514	Lewis, John	51	M.	Full	61
	Entire claim against this individual.....				\$75.00
	To Balance				\$10,514.86
	Expenses not charged in any account.....				1,477.47
	Total				\$11,992.33

Have original expense books.

[Endorsed:] In the U. S. Court of Claims. No. 29821. Charles F. Winton et al. vs. Jack Amos et al. Amended Petition of W. N. Vernon. Wm. W. Wright, Att'y.

85½

EXHIBIT "B."

2,597.65
768.67
781.57
1,661.48
822.08
1,850.08
31.60
50.36
57.00
78.17
67.00
605.30
23.15
52.90
979.67
76.63
741.88
117.11
1,178.67
39.64
352.81
43.85
113.18
164.66
509.09
315.68
217.81
196.10
88.65
83.65
61.65
15.40
10.00
75.00
75.00
75.00
75.00

Expenses not charged.....	15,053.17
	1,477.47
	16,530.64

EXHIBIT "C."

Expenses of W. N. Vernon in traveling to and from Miss., including expenses while traveling in the Territory looking for and purchasing improvements for Indians, homes not charged to any Indian or included in book accounts.

Original Expense Books will be offered in evidence.

Aug. 29, '01, to 23, '01. Expenses to McAlester and other points	\$14.90
Sep. 1, '01, to 10, '01. Expenses to Meridian and other points in Miss.	90.00
Oct. 14, '01, to 28, '01. Expenses to Meridian and other points	231.90
Nov. 5, '01, to 8th. Expense to Kiowa, I. T., and other points	19.15
Nov. 11, '01, to 15, '01. Expense to Ada, Madill, I. T., and other points	30.00
Nov. 24, '01, to 29, '01. Expenses to Purcell and other points	35.20
Jan. 6, '02, to 8, '02. Muskogee and other points	22.25
Mar. 10, '02. Ft. Smith	5.00
	<hr/>
	\$448.40

Page 2. W. N. Vernon Expense Account continued.

Brought forward from Page 1	\$448.40
Mar. 30, '02, to Apr. 1, '02. Expense at Kiowa and McAlester	13.15
May 6, '02, to May 18. Expense Meridian, Miss., and other points	97.30
June 15, '02, to 18th. McAlester and other points	15.15
June 24, '02, to 26th. Expense Kiowa and Rockhouse Place	15.00
July 1, '02, to 5th. Looking at improvements in county near Kiowa	30.65
July 9, '02, to 11th. Kiowa and other points	32.85
87 " 20th to 23rd " " " "	13.80
" 27th to Aug. 7th. Expenses looking up improvements	25.20
Aug. 8 and 9, '02. Expenses at Kiowa	13.20
Aug. 18th to 21st. " " " "	18.95
	<hr/>
	\$713.65

Page 3. Vernon Expenses continued.

Brought forward from Page 2	\$713.65
Aug. 26, '02, to Sep. 12, '02. Expenses to Meridian, Miss.	105.60
Sep. 17th to Sep. 19, '02. Expense in Territory	15.90

Sep. 28th to Oct. 3, '02. Expense sending Indians to Miss.	48.90
Oct. 6, '02, to 8th. Expense Kiowa and vicinity	14.00
Oct. 17th to 27th. Expense Kiowa and vicinity	15.30
Oct. 29th to Nov. 20, '02. Expense to Miss. and return, less transportation for Indians.	238.00
Nov. 23rd to 26, '02. Expense at Kiowa.	21.97
Nov. 30, '02, to Dec. 3rd. Expense at Kiowa.	20.05
Dec. 8, '02, to Dec. 24, '02. Expense to Meridian, Miss., and return, less transportation for Indians.	79.10
Dec. 28, '02, to Jan. 1, '03. Expense at Kiowa.	31.00
Jan. 1, '03, to Jan. 16, '03. Expense at Kiowa.	50.70
Jan. 18, '03, to 22nd. Expense at Kiowa.	20.05
Jan. 26th to Feb. 4th. Expense to Meridian, Miss., less transportation for Indians.	103.25
Total.	<hr/> \$1,477.47

88 CITY OF WASHINGTON,
District of Columbia, ss:

I, William W. Wright, being first duly sworn, upon oath depose and say:

I am a member of the firm of Howe & Wright, the attorneys named in the foregoing and annexed petition. On the 10th day of July, 1908, I served notice upon the Governor of the Choctaw Nation of the foregoing suit by mailing a true copy of said petition, by registered mail, addressed to Green McCurtain, present Governor of the Choctaw Nation, addressed to him at McCurtain, Oklahoma.

WILLIAM W. WRIGHT.

Subscribed and sworn to before me this 10th day of July, 1908.

[SEAL.]

S. A. TERRY, *Notary Public*.

89 *Intervening Petition of Chester Howe and His Associates.*

On August 22, 1908, the original intervening petition of Chester A. Howe and his associates was filed by leave of Court. On June 18, 1909, Katie A. Howe, as adm'x., was allowed to be substituted as claimant by the Court. On January 25, 1911, by leave of Court, an amended petition in her name was filed, and on Oct. 13, 1913, a second amended petition was filed, both of which follow:

In the Court of Claims.

No. 29821.

THE ESTATE OF CHARLES F. WINTON, Deceased, and Others,

VS.

JACK AMOS and Others, Known as the "Mississippi Choctaws."

Amended Petition of Katie A. Howe, Administratrix of the Last Will and Testament of Chester Howe, Deceased.

To the Honorable Chief Justice and Judges of the Court of Claims:

Now comes your petitioner, Katie A. Howe, above named, and for her amended petition respectfully shows:

Chester Howe, deceased, the original intervener in the above-entitled cause, departed this life on the first day of October, 1908, and thereafter said suit, under order of this Honorable Court, was duly revived in the name of your petitioner as executrix of the last will and testament of Chester Howe, deceased.

The original petition filed in this case by Chester Howe, deceased, is hereby amended by adding thereto certain additional paragraphs, which follow the same numerical order as adopted in said original petition, as follows:

20. That after the legislation providing for the identification of Mississippi Choctaws, contained in the Act of June 28th, 1899, commonly called the "Curtis" Act, said Chester Howe represented a large number of Mississippi Choctaws before the Commission to the Five Civilized Tribes, the Indian Office, and the Secretary of the Interior, and by reason of his arguments and efforts in behalf of said clients obtained favorable rulings from said Departments, which so simplified the consideration of applications, that it was possible for large numbers of other persons to successfully present their claims for identification.

21. The Commission to the Five Civilized Tribes about the year 1899 claimed exclusive jurisdiction in all citizenship matters arising in the Five Civilized Tribes and maintained this attitude until their position was subsequently reversed by decision of the Secretary of the Interior. During this time the Commission refused to allow affidavits of witnesses to be filed in behalf of applicants for identification as Mississippi Choctaws and even refused to make a record of the cases so that any reviewing officer might have an opportunity to ascertain whether or not justice had been done. Accordingly, October 13th, 1899, Mr. Chester Howe, as attorney, filed in the Indian Office at Washington, D. C., the applications of Isaac Morgan et al., and Sarah McDonough et al., Mississippi Choctaw applicants, asking that they be identified as Mississippi Choctaw Indians claiming the right to enrollment under the 14th article of the treaty of 1830. These applications were submitted with the statement that

it was shown that the applicants had moved to the Choctaw Nation and that the Commission had made no investigation relative to ascertaining whether they were descendants of Mississippi Choctaws and raising the question whether said Commission was carrying out the previous instructions of the Department.

22. Thereafter, by Departmental decision in said applications, a rule was adopted which was applied in all subsequent cases, under which the said Commission was required to make a complete record of all cases and permit the filing of affidavits so that, upon appeal, the Department at Washington would be able to ascertain whether or not the Commission had properly developed the facts. By reason of such ruling, obtained through the direct efforts of Chester Howe, all subsequent applicants succeeded in having their day in Court and a complete record was thereafter made in all Mississippi Choctaw cases.

23. On or about the year 1900, said Commission again refused to receive certain applications for enrollment as members of the Choctaw Tribe and also refused to make a record of such cases. Whereupon the question was presented to the Honorable Commissioner of Indian Affairs by said Chester Howe, and, in reply, letters were received from the Commissioner of Indian Affairs addressed to said Chester Howe, dated January 24th and February 13th, 1900, respectively, advising him that by decision of the Department said Commission had been instructed to receive certain applications and also to make a record thereof, etc., the original of said letters being hereto attached marked Exhibits Nos. 1 and 2.

24. Thereafter, to-wit, about the year 1901, it was discovered by said Chester Howe and his agents in the field, that the said Commission to the Five Tribes was conducting the identification of Mississippi Choctaw applicants in an insufficient way and that the Commission failed to develop the essential facts necessary to determine the rights in applicants to identification as Mississippi Choctaws.

25. Whereupon said Chester Howe, after having duly entered his appearance by letter in the case of Lizzie Woodward et al., directed the attention of the Commissioner of Indian Affairs to such practice and conduct of said Commission in Mississippi Choctaw cases, all of which resulted in the subsequent action of the Indian Office in their letter of April 30th, 1901, addressed to the Honorable Secretary of the Interior, and the decision of the Honorable Secretary of the Interior by letter of June 10th, 1901, addressed to the Commission to the Five Civilized Tribes, requiring them to make such investigations of each claim as would develop the essential facts and the case was remanded for such purpose, and this important ruling enured to the benefit of all subsequent applicants. (Certified copies of said letters being on file in this case.) (See reply of the Interior Department to call of June 17th, 1910, and filed November 12th, 1910.)

26. Thereafter there came before the Commissioner of Indian Affairs an application of certain Mississippi Choctaws known as the consolidated application of Jim Gift et al., who had been denied

identification by said Commission because it did not appear from the record that the ancestor through whom claim was made was a patentee under the 14th article of the treaty of 1830; a list of such applicants being hereto attached marked Exhibit No 3. Thereafter, on June 25th, 1904, an appearance was entered and a brief filed in said case by Chester Howe, as attorney for applicants, while said application was pending before the Commissioner of Indian Affairs.

27. Thereafter, to-wit, on November 23rd, 1904, a decision was rendered by the Assistant Secretary of the Interior, by letter addressed to the Commissioner of Indian Affairs, reversing the decision of said Commission and directing it to identify the applicants in said case as Mississippi Choctaws, in accordance with the recommendation of the Indian Office, etc., certified copies of said letters being hereto attached, marked Exhibits Nos. 4 and 5.

28. That the effect of this decision was far-reaching in that it caused a relaxation of the arbitrary rule of evidence required
93 by the Commission in the matter of 14th article applicants theretofore prevailing; because it was held that where the records of the Government showed that the applicant or the ancestor through whom claim was made subsequently received scrip in lieu of patent under article 14 of the treaty, such scribee was of equal standing with a patentee, as far as the line of proof was concerned, and thereafter the Department adhered to this rule.

29. That after the passage of the treaty of July 1, 1902, Chester Howe raised a large amount of money, to-wit, more than Five Thousand Dollars, which was sent to L. P. Hudson, his associate, and used largely for the purpose of paying the expenses of full-blood Mississippi Choctaws in order that they might come to those places in the State of Mississippi where the officers of the Dawes Commission were holding sessions for the purpose of identifying Mississippi Choctaws under the provisions of said treaty. That of all those applicants for identification under said treaty of July 1, 1902, said Chester Howe, through his associate, L. P. Hudson, represented about two-thirds. Other large sums of money were also expended in behalf of said applicants for identification in the paying of their board while attending the meetings of the Commission, and otherwise providing for their actual necessities of life, the exact amount of which your petitioner is unable to say.

30. That thereafter a number of Mississippi Choctaws were removed from the State of Mississippi to the Indian Territory, by said Chester Howe, within the statutory limit of time and they subsequently received valuable allotments of lands in the Choctaw and Chickasaw Nations, a list of whom are filed herein, referred to as Exhibit No. 6.

31. The persons mentioned in said list in addition to
94 unusual services rendered them in the matter of their identification and enrollment, had their debts paid in Mississippi by said Chester Howe in order that they might be removed to Indian Territory and, upon removal there, they were filed upon very valuable lands in the neighborhood of Roff, Oklahoma, having been able to do so by reason of the fact that the right to file thereon had

first been obtained by said Chester Howe in association with L. P. Hudson by reason of the purchase of improvements thereon and the subsequent erection of additional improvements.

32. It is believed that the legal services in the matter of the enrollment of the "Jim Gift" and "Seals" families whose names are set forth in Exhibit 3, should be considered by the court as extraordinary and therefore entitled to extra compensation, for the reason that such enrollment was entirely dependent upon the skill and zeal of the attorney of record, who successfully prosecuted a novel question before the highest tribunals of the Interior Department.

33. That thereafter said Chester Howe caused the persons identified and enrolled under said "Jim Gift" decision, to be moved from the State of Mississippi to Oklahoma, where they were filed upon valuable lands in the neighborhood of Roff, Oklahoma. That in such removal, it was first necessary to pay the indebtedness of the Indians due in Mississippi and thereafter furnish them with clothing, fuel, teams, farming implements, etc., and also the purchase of existing improvements on the lands filed, in order that the applicants for such allotments might have the prior right to file the same.

34. That the character of the lands upon which all of said transported Indians were filed was considerably more than the average commercial value and is now of the value of \$30.00 per acre and upwards. Each of said persons received an allotment of at least the average amount of land approximately 320 acres for each
95 allotment. In addition, each of said persons are entitled to a distributive share of the tribal funds now in the hands of the Treasury of the United States and also an undivided interest in other funds arising by reason of the sale of coal and mineral rights in the Choctaw and Chickasaw Nations, etc., the exact value of this distributive share being unknown but, upon information and belief, of the value of several thousand dollars.

35. That in addition to the individual Mississippi Choctaws named in Exhibit No. 6 herein, said Chester Howe was the duly authorized attorney, under individual contracts, of all those Mississippi Choctaws with whom contracts had been made by J. F. Arnold, individually, the firm of Hudson & Arnold or L. P. Hudson, individually, and continued to represent all of them until after the approval of said Act of Congress known as the Treaty of July 1, 1902, and thereafter a considerable part of them, until the time of his death, October 1, 1908.

Prayers.

The premises considered, your petitioner prays as follows:

1. That this petition be considered by the court as supplemental to the original petition filed herein by said Chester Howe, deceased, and judgment rendered accordingly.

2. For such other and further relief as to the court may seem just and proper in the premises.

KATIE A. HOWE,
Executrix of Last Will and Testa-
ment of Chester Howe, Deceased.
WILLIAM W. WRIGHT, *Attorney.*

96

Affidavit.

DISTRICT OF COLUMBIA,
City of Washington, ss:

Katie A. Howe, being first duly sworn, upon oath deposes and says: She is the person named in the foregoing amended petition subscribed by her and that she has read the contents thereof and that the allegations therein contained are true to the best of her knowledge and belief.

KATIE A. HOWE.

Subscribed and sworn to before me this 19th day of January, 1911.

[SEAL.]

A. M. PARKINS,
Notary Public, District of Columbia.

EXHIBIT No. 1.

DEPARTMENT OF THE INTERIOR,
 OFFICE OF INDIAN AFFAIRS,
 WASHINGTON, Feb. 13, 1900.

Chester Howe, Esq., Attorney-at-Law, 623 F St., N. W., Washington, D. C.

SIR: You are hereby informed that certain petitions, heretofore filed in this office by you as attorney, asking that an order be issued directing the Commission to the Five Civilized Tribes to receive certain applications for enrollment as members of the Choctaw tribe of Indians, and that it be required to make a record thereof, were transmitted to the said commission, February 8, 1900, with instructions that it take action in manner as requested, as follows:

Robert Moore, et al.....	Land 5720—1900
T. L. Bayles.....	Land 5721—1900
F. A. Hill, et al.....	Land 5722—1900
97 Susan J. Tippet, et al.....	Land 5723—1900
Joel B. Allen, et al.....	Land 5724—1900
Geo. Patrick, et al.....	Land 5725—1900
Amanda I. Dunn, et al.....	Land 5984—1900
R. B. Peirce, et al.....	Land 5985—1900
Mahala D. Shaw.....	Land 5986—1900
L. V. Benson, et al.....	Land 5987—1900

Very respectfully,

A. C. TONNER,
Assistant Commissioner.

C.F.H.—L.

EXHIBIT No. 2.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, January 24, 1900.

Chester Howe, Esq., Attorney-at-Law, 623 F St., N. W., Washington, D. C.

SIR: You are advised that the following petitions, for enrollment as members of one of the Five Civilized Tribes, filed by you in this office on the 10th day of January, 1900, have this day been forwarded to the Commission to the Five Civilized Tribes, with instructions that it make a record of the applications, and that it file and retain such papers as have been presented in their support, which instructions are agreeable to Departmental letters of December 26th and 28th, 1899, respectively:—

Florence Stark, et al.	Land 1763—1900
Joseph Johnson, et al.	Land 1767—1900
M. M. Davis, et al.	Land 1768—1900
Eliza J. Pearce, et al.	Land 1769—1900
Jerry Scarborough, et al.	Land 1770—1900
John Miller, et al.	Land 1771—1900
Florence Carroll, et al.	Land 1772—1900
Sarah Jane Ezelle, et al.	Land 1773—1900
Hiram O'Neill, et al.	Land 1774—1900
98 Catharine Whittler, et al.	Land 1775—1900
Obidiah Waller, et al.	Land 1776—1900
Walter Stiggins, et al.	Land 1777—1900
John Scarborough, et al.	Land 1778—1900
Nancy Cummins, et al.	Land 1779—1900

You are informed that on January 8, 1900, this office forwarded to the Commission to the Five Civilized Tribes, with instructions in like manner, similar petitions filed by you previous to January 8, 1900, as follows:—

Sallie Berryman, et al.	Land 57840—1899
Robert W. Jones, et al.	Land 58224—1899
W. W. Quillan, et al.	Land 58225—1899
Lou E. Smith, et al.	Land 58993—1899
S. D. Gaines, et al.	Land 59163—1899
Victoria Boyd, et al.	Land 61521—1899
Emma V. Biggs, et al.	Land 61523—1899
Emeline Cunningham, et al.	Land 61524—1899
J. M. Carter, et al.	Land 61525—1899
Elizabeth Fryar, et al.	Land 61526—1899
Lemuel Harris, et al.	Land 61528—1899
Margaret E. Hale, et al.	Land 61529—1899
John M. Jones, et al.	Land 61531—1899
Susan Jester, et al.	Land 61532—1899

Kate May, et al.....	Land 61533—1899
Mary L. Merrifield, et al.....	Land 61535—1899
Eliza Parks, et al.....	Land 61536—1899
Fannie Patterson, et al.....	Land 61537—1899
Nancy C. Pate, et al.....	Land 61538—1899
John Scarborough, et al.....	Land 61539—1899
Tilford Self, et al.....	Land 61540—1899
Wm. C. Self, et al.....	Land 61541—1899
R. E. Barron, et al.....	Land 461—1900
A. J. Mann, et al.....	Land 462—1900
Lucinda Hibdon, et al.....	Land 463—1900

Very respectfully,

A. C. TONNER,
Assistant Commissioner.

C.F.H.—C.

99

EXHIBIT No. 3.

Roll No.	Name.	Age.	Sex.	Blood.
1327	Jim Gift.....	78	M.	$\frac{1}{2}$
1329	Sarah Gift.....	16	F.	$\frac{1}{4}$
1328	Movella Gift.....	12	F.	$\frac{1}{4}$
1330	Johnson Gift.....	22	M.	$\frac{1}{4}$
1331	Effie Gift.....	1	F.	$\frac{1}{8}$
1332	Donnie Gift.....	21	F.	$\frac{1}{4}$
1333	Maggie Mosely.....	24	F.	$\frac{1}{4}$
1252	Annie Seals.....	19	F.	$\frac{1}{4}$
	Henry Seals.			
1334	Emma Seals.....	36	F.	$\frac{1}{4}$
1335	James Seals.....	19	M.	$\frac{1}{8}$
1336	Ara Seals.....	12	F.	$\frac{1}{8}$
1337	Kernell Seals.....	11	M.	$\frac{1}{8}$
	Caroline Seals.			
1338	Ada Seals.....	6	F.	$\frac{1}{8}$
1339	Talmage Seals.....	4	M.	$\frac{1}{8}$
	Mary Seals.			

EXHIBIT No. 4.

Chester Howe, Attorney-at-Law, 623 F St., N. W., Washington,
D. C.

WASHINGTON, D. C., June 25, 1904.

Hon. Commissioner of Indian Affairs, Washington, D. C.

DEAR SIR:—I have the honor to enclose herewith, Brief and appearance in the matter of the application of Jim Gift et al., for identification as Mississippi Choctaws, the same being filed for such consideration as may be deemed proper by you.

I have the honor to be,

Respectfully,

CHESTER HOWE.

100

EXHIBIT No. 5.

I.T.D. 7841—02,
1306—04,
11230—04.

L R S

DEPARTMENT OF THE INTERIOR,
WASHINGTON, November 23, 1904.

Commissioner of Indian Affairs.

SIR: Enclosed herewith is a communication addressed to the Commission to the Five Civilized Tribes, reversing its decision of October 10, 1902, in the Mississippi Choctaw Case of Jim Gift et al., and directing it to identify the applicants in said case as Mississippi Choctaws, in accordance with the recommendation of the Indian Office dated December 16, 1902, and November 2, 1904 (Land, 40407), respectively.

The record and papers in the case are also enclosed herewith.

Respectfully,

M. W. MILLER,

6 enclosures.

Assistant Secretary.

EXHIBIT No. 6.

Roll No.	Name.	Age.	Sex.	Blood.
225	Frank Johnson.....	40	M.	Full
21	Eliza Billy	33	F.	Full
56	Jacob Cooper.....	41	M.	Full
57	Julia Cooper.....	36	F.	Full
58	Foster Cooper.....	13	M.	Full
59	Janie Cooper.....	8	F.	Full
60	Susie Cooper.....	3	F.	Full
61	George Cooper.....	1	M.	Full
62	Alex Davis.....	22	M.	Full
1235	Jimmie Johnson.....	22	M.	Full
334	John Neal.....	53	M.	Full
303	Jeff D. Neal.....	28	M.	Full
304	Dora Neal.....	25	F.	Full
305	Cora Neal.....	2	F.	Full
306	Earnest Neal.....	1	M.	Full
101				
407	Nancey Neal.....	82	F.	Full
541	Martha Waiter.....	21	F.	Full
542	Robert Waiter.....	5	M.	Full
632	Richmond Billey.....	28	M.	Full
633	Martha Billey.....	25	F.	Full
634	Lizzie Billey.....	9	F.	Full
635	Harrison Billey.....	6	M.	Full
636	Sallie Billey.....	80	F.	Full
637	Dennis Sam.....	18	M.	Full

Roll No.	Name.	Age.	Sex.	Blood.
638	Acy Sam.....	16	F.	Full
1061	George Jeff.....	21	M.	Full
1062	Lula Jeff.....	19	F.	Full
1072	Wallace Henry.....	29	M.	Full
1073	Lillie Henry.....	—	F.	Full
1074	Josie Henry.....	2	M.	Full
1087	John Henry.....	67	M.	Full
1109	Oscar Billey.....	39	M.	Full
1110	Beauty Billey.....	27	F.	Full
1115	Sallie Dora Billey.....	2	F.	Full
1116	Emerson Billey.....	1	M.	Full
1164	Jim Postoak.....	48	M.	Full
1165	Mary Postoak.....	33	F.	Full
1166	Jim Brown Postoak.....	9	M.	Full
1327	Jim Gift.....	78	M.	$\frac{1}{2}$
1328	Movella Gift.....	12	F.	$\frac{1}{4}$
1329	Sarah Gift.....	16	F.	$\frac{1}{4}$
1330	Johnson Gift.....	22	M.	$\frac{1}{4}$
1331	Effie Gift.....	1	F.	$\frac{1}{4}$
1332	Donnie Gift.....	21	F.	$\frac{1}{4}$
1333	Maggie Mosely.....	24	F.	$\frac{1}{4}$
1334	Emma Seals.....	36	F.	$\frac{1}{4}$
1335	James Seals.....	19	M.	$\frac{1}{8}$
1336	Ara Seals.....	12	F.	$\frac{1}{8}$
1337	Kernell Seals.....	11	M.	$\frac{1}{8}$
1338	Ada Seals.....	6	F.	$\frac{1}{8}$
1329	Talmage Seals.....	4	M.	$\frac{1}{8}$
1252	Annie Seals.....	19	F.	$\frac{1}{4}$

102 *Second Amended Petition of Katie A. Howe, Ex't'x.*

Court Claims of the United States.

No. 29,821.

THE ESTATE OF CHARLES F. WINTON, Deceased, and Others,

v.

JACK AMOS and Others, Known as the "Mississippi Choctaws."

Second Amended Petition in Behalf of the Estate of Chester Howe,
Deceased.

Now comes Katie A. Howe, executrix of the last will and testament of Chester Howe, deceased, by her attorney, William W. Wright, and for her second amended petition respectfully shows:

In order that the original petition filed herein may conform to the record proof, it is alleged as follows:

1. That Chester Howe, deceased, was originally employed on and

in behalf of all resident Mississippi Choctaws, residing in the State of Mississippi (including those now appearing by name upon the final approved rolls of the Choctaw Nation) at their request and through their authorized representatives, by virtue of a certain power of attorney and general contract, set forth at length on page 927 et seq., of the printed record, and also by virtue of a certain "Band" contract referred to in the record testimony of the intervenor Walter S. Field.

103

Intervening Petition of J. S. Bounds.

The intervening petition of J. S. Bounds was filed by leave of Court August 25, 1908. Subsequently, to-wit, on Feb. 24, 1911, by leave of Court, an amendment was filed to the petition so that it now reads as follows:

In the Court of Claims.

No. 29,821.

The ESTATE OF CHARLES F. WINTON, Deceased, and Others,

vs.

JACK AMOS and Others, Known as the "Mississippi Choctaws."

Intervening Petition as Amended of J. S. Bounds, Attorney in Fact for T. A. Bounds.

To the Honorable Chief Justice and Judges of the Court of Claims, respectfully represents:

First. That on May 29, 1908, the Congress of the United States by enactment provided in Section 27, of the Act approved on said date, as follows:

"That the Court of Claims is hereby authorized and directed to hear, consider, and adjudicate the claims against the Mississippi Choctaws of William N. Vernon, J. S. Bounds, and Chester Howe, their associates or assigns, for services rendered and expenses incurred in the matter of the claims of the Mississippi Choctaws to citizenship in the Choctaw Nation and to render judgment thereon on the principle of *quantum meruit* in such amount or amounts as may appear equitable and justly due therefor, which judgment, if any, shall be paid from the funds now or hereafter due such Choctaws as individuals by the United States. The said William N. Vernon, J. S. Bounds and Chester Howe are hereby authorized to intervene in the suit instituted in said court under the provisions of section nine of the Act of April twenty-six, nineteen hundred and six in behalf of the estate of Charles F. Winton, deceased: Provided, That the evidence of the intervenors shall be immediately submitted: And provided further, That the lands allotted to the said Mississippi Choctaws are hereby declared subject to a lien to the extent of the

claims of said Winton and of the other plaintiffs authorized by Congress to sue the said defendants, subject to the final judgment
104 of the Court of Claims in the said case. Notice of such suit or intervention shall be served on the Governor of the Choctaw Nation, and the Attorney-General shall appear and defend the said suit on behalf of the said Choctaws."

Second. That your petitioner is a citizen of the United States and a resident of Walnut Springs, Texas, a lawyer by profession and a brother of T. A. Bounds, who is a citizen of the United States and a resident of Wortham, Texas; that by a certain power of attorney bearing date Feb. 22nd, 1908, the said T. A. Bounds made, constituted and appointed your petitioner, J. S. Bounds, attorney in fact for him, the said T. A. Bounds, to represent him in any and all matters pertaining to his claims against the Mississippi Choctaw Indians, the same being the subject matter of this petition; copy of said power of attorney being hereunto attached marked "Exhibit A" and made a part of this petition; that the said J. S. Bounds is the identical J. S. Bounds named in the act of Congress above mentioned.

Third. That T. A. Bounds in the matters herein set forth was an associate of Chester Howe named in said act.

Fourth. That T. A. Bounds is a native of the State of Mississippi and was familiar with the condition of the Mississippi Choctaw Indians residing in said State and, by reason of this familiarity of said Indians and his knowledge of the claims of said Indians and the decisions of the Department of the Interior relative to their rights, he entered into contracts with certain Mississippi Choctaw Indians in the month of April A. D. 1901, under which contracts he agreed to assist said Mississippi Choctaw Indians to secure their identification and enrollment in the Choctaw Nation in the Indian Territory, said contracts being first verbal agreements reduced to writings and bearing dates subsequent to said verbal agreements during the years
1901 and 1902.

105 Fifth. That the condition of the Mississippi Choctaws in Mississippi in April, 1901, and at all times prior to their removal from the Indian Territory was that of extreme poverty. They were tenants upon small tracts of land worked upon shares or division of crops with the landlord and, under the laws of Mississippi, it was a misdemeanor to secure or aid or abet the removal of a tenant during the term of his yearly contract without the payment of any indebtedness due the landlord. The rights of these people had not been determined but were dependent upon their identification by the officers of the government of the United States, who were acting through the Commission to the Five Civilized Tribes, commonly known as the Dawes Commission, and that said officers in the spring of 1901 held sessions at Meridian, Mississippi, for the purpose of hearing evidence relative to the identification of said Mississippi Choctaw Indians. That the Mississippi Choctaw Indians resided in several counties in Mississippi, oftentimes a long distance from Meridian, and were without money to pay for transportation or sustenance or that of their witnesses before said Commission, and the said Bounds, in their interest, on their behalf, and under his agreement, furnished these peo-

ple with provisions, money for railroad fare, necessary clothing, and all of the things necessary and proper to secure their identification and the preservation of their rights and expended therefor large sums of money aiding and assisting them by advice as well as the expenditure of money while said Commission was at Meridian, Mississippi, the names of the parties so furnished being given on a schedule hereunto attached marked "Exhibit B" and made a part hereof.

Sixth. That under the decision of the officers of the United States the rights of these Mississippi Choctaws could not be preserved without removal to the Indian Territory and the establishment of bona fide residence therein, and thereupon, the said T. A. Bounds advanced to said Indians necessary funds to remove from Mississippi to the Choctaw Nation, Indian Territory, and in compliance
106 with the laws of Mississippi, in many instances paid debts due the landlord, bought clothing necessary for the journey, paid the expenses of transportation from their homes to the city of Meridian, Mississippi, from which point a common railroad rate had been obtained, paid railroad fare and the costs of sustenance enroute, the salary and expenses of interpreter to accompany them, going himself at great expense and loss of time, furnishing medicine and medical attention where necessary and providing fully for said people, all of which acts were in the interests and for the benefit of said Indians, were accepted by them, and resulted in their obtaining valuable rights.

Seventh. That after entering into contracts with these Indians, T. A. Bounds came to the Choctaw Nation, Indian Territory, to ascertain where and in what manner lands and allotments could be obtained for the Mississippi Choctaws who were entitled to the same, and found that the good agricultural lands of the Choctaw Nation were nearly all held under a claim right of possession by persons who had placed improvements thereon, inclosed the same by fence or other evidences of title or claim; that each legal subdivision had been inspected by an officer under the Dawes Commission and described or listed under the name of the party claiming the same, and it was customary to transfer said improvements and the right of possession by Bills of Sale, and he further found that before lands could be allotted the applicant for allotment must show that he was the owner of the improvements or that no other person had a superior right to that of the applicant.

Eighth. It being apparent that these Indians would need shelter upon their arrival in the Indian Territory, he spent a large amount of time and considerable sums of money in traveling over the Choctaw-Chickasaw countries endeavoring to secure a location for the allotments of these people upon their arrival and purchased improvements to the value of about Five Thousand Dollars for them and in
their interest for said purposes, commenced improvements
107 thereon for the purpose of securing their allotments, when on July 29, 1901, the Governors of the Choctaw and Chickasaw Nations filed complaint in equity in the United States Court for the Central District for the Indian Territory at McAlester and secured a temporary restraining order against the said T. A. Bounds and others

named in said petition, which suit was continued through several hearings to the month of November, 1901, at great expense to the said T. A. Bounds involving both the payment of money, attorney fees, and loss of time, together with incidental expenses, and was finally dismissed by the court, and that all of the expenses incurred were incurred in the defense of the rights of these Indians to participate in the lands and moneys of the Choctaw Nation, Indian Territory.

Ninth. That your petitioner has caused a list to be made of the names of the individuals and heads of families, (including the number in the family) of those Mississippi Choctaws who were actually allotted lands in the Choctaw-Chickasaw Nations by reason of the expenditures and efforts of petitioner; said list being attached hereto marked "Exhibit C" and prayed to be considered a part of this petition. Said list includes the expenses incurred in removal of said Indians and the expense of bringing them before the local Land Office in Indian Territory for the purpose of filing and selecting lands, and also supplies furnished and improvements purchased in their behalf.

Tenth. That thereafter during the year 1901 and up to and including spring of 1903, the said T. A. Bounds continued to furnish money, supplies, transportation, medical attendance and all necessary things, including teams, tools and feed to these Indians. That some of the parties with whom he had contracts and for whom the expenses for the identification had been advanced came to the Choctaw Nation with other persons than the said Bounds. And some of those whose expenses for removal were paid by the said
108 Bounds were induced by other persons to repudiate their contract and take lands at other places after they had accepted the expenditures made on their behalf by him; others received their full allotment but nearly all repudiated their contracts by failing to carry the same out either according to the letter or spirit thereof, and the amounts expended for which judgment is prayed in this petition aggregate about fifteen thousand dollars, as set forth in said schedule "C."

Eleventh. That the expedition of the said T. A. Bounds made in the interest of all of the said Indians that were not charged as individuals amount to Five Thousand Dollars.

Twelfth. That in securing allotments for these Indians the said T. A. Bounds expended on their behalf the costs, witness fees, attendance, and attorneys fees in such land cases as were necessary in defending and protecting their rights before the Land Office branch of the Dawes Commission. That he defended two or more cases in the U. S. District Court at McAlester other than the one above mentioned; and that he is entitled to remuneration for the time spent and energy used in securing and protecting the rights of these parties to their estates in the Choctaw Nation; and that the reasonable value of said service for time and money spent is Six Thousand Dollars.

Thirteenth. That none of the charges herein set forth have been paid; that the same are due and unpaid.

Fourteenth. That your petitioner believes the individual Mississippi Choctaws referred to in this petition are a portion of the Mississippi Choctaws sought to be made defendants under the original petition filed by the estate of Charles F. Winton in this case; that no person other than your petitioner is entitled to any priority of his payment or other relief over your petitioner for the reason that the lands so held were acquired with the money furnished by him and are now the property of said individuals by reason of the expenditure of the money and the performance of the services as set forth herein, and that your petitioner, as he believes, has an equitable right of intervention in said suit, irrespective of the jurisdictional act set forth herein.

Wherefore, your petitioner prays:

First. That this petition may be filed and docketed as an intervening petition on case number 29,821 as referred to herein.

Second. That he may have judgment against the individuals named in the schedule attached and made part of this petition for the respective amounts expended upon their behalf, and that accounts carried in the names of families may be prorated among the members of said families.

Third. That he may have judgment for the services rendered, and that in equity the same shall be prorated between the individuals receiving the benefit thereof, and that interest may be allowed and computed from the date shown in the schedule at the rate of 6 per cent per annum for the cash expended and advanced; that the judgments shall be decreed a lien, as provided by the jurisdictional act; and for such other and further relief as to the court, in its wisdom, may seem just and equitable, and your petitioner will ever pray, etc.

J. S. BOUNDS, *Petitioner.*

HOWE & WRIGHT,
Attorneys for Petitioner.

W. S. FIELD,
Of Counsel.

110 STATE OF TEXAS,
County of Bosque, ss:

J. S. Bounds, being first duly sworn, on oath states that he has read the foregoing petition by him subscribed; that he is the petitioner named therein; that the facts stated in said petition as being of his knowledge are true, and the facts stated upon information and belief, he verily believes to be true.

J. S. BOUNDS.

Subscribed and sworn to before me this 18th day of August, 1908.

[SEAL.]

J. W. MINGUS,
Notary Public.

My commission expires May 31, '09.

EXHIBIT "A."

STATE OF OKLAHOMA,
Pittsburg County, ss:

Know all men by these presents that I, T. A. Bounds, of Wortham, Freestone County, Texas, have made, constituted and appointed, and by these presents do make, constitute and appoint, J. S. Bounds, of Walnut Springs, Bosque County, Texas, my true and lawful Attorney in fact for me, and in my place to present, enforce and prosecute, in the departments of the United States Government, the Courts and the Congress if needed be, my claims against the United States and certain Mississippi Choctaw Indians, whose names, together with the accounts or amounts due are hereto attached (marked exhibit "A") and made a part hereof, for supplies furnished to and cash paid to and expenses for said Mississippi Choctaws; empowering him to verify all pleadings and documents properly used in connection therewith, and to receive the treasurer's draft or warrant that 111 may be issued in payment of said claim or claims, hereby giving to my said Attorney full power to revoke or to continue in force a certain power of Attorney heretofore given to one Arthur E. Wallace of Chicago, Illinois, for the same purposes herein mentioned, as my said Attorney herein mentioned may see fit in his discretion.

Giving and granting to my said Attorney, J. S. Bounds, by these presents, to have, use and take all lawful ways and means in my name for the purposes aforesaid, and generally to do all and everything, act or acts necessary to be done as fully and completely to all intents and purposes as I might or could do if personally present, hereby ratifying and confirming all that my said Attorney shall lawfully do or cause to be done by virtue hereof.

In witness whereof I have hereunto set my hand at Kiowa, Oklahoma, this the 22nd day of February, A. D. 1908.

(Signed)

T. A. BOUNDS.

Before me the undersigned authority personally appeared, T. A. Bounds, of Wortham, Texas, known to me to be the person who executed the foregoing instrument, and named in the foregoing power of Attorney, who in my presence subscribed to and acknowledged the same to be his act and deed, and stated to me that he had executed the same for the purposes and consideration therein mentioned and expressed.

W. N. VERNON,
Notary Public, Pittsburg Co., Oklahoma.

112

AMENDED EXHIBIT "B".

List of enrolled Mississippi Choctaw Indians, carried before the Dawes Commission in Mississippi, showing amount expended per family and individual prior to identification, also expenses incident to identification, including sustenance and services.

Roll No.	Name.	Age.	Sex.	Blood.	
279	Boston, Lizzie	30	F.	Full	1
280	" Bennie	10	M.	"	2
281	" Dora	8	F.	"	3
152	Shoemaker, Jennie	28	F.	"	4
524	Foley, Betsie	48	F.	"	5
525	" Oscar	18	M.	"	6
260	Elix, Davis	32	M.	"	7
514	Lewis, John	51	M.	"	8
293	Smith, Thomas	22	M.	"	9
698	Thomas, John R.	25	M.	"	10
699	" Emma	35	F.	"	11
700	" Ada	7	F.	"	12
701	" Henry	1	M.	"	13
113					
601	John, Big	74	M.	Full	14
486	Tubbee, Columbus	21	M.	"	15
781	Simpson, Sam	55	M.	"	16
474	Johnson, Isaac	66	M.	"	17
475	" Susie	43	F.	"	18
476	" Sallie	18	F.	"	19
477	" Painey	8	F.	"	20
478	" Mattie	7	F.	"	21
1148	Lewis, Dan	22	M.	"	22
603	John, Charley	21	M.	"	23
614	Johnson, John P.	20	M.	"	24
333	Davis, Frank	20	M.	"	25
651	James, Wash	26	M.	"	26

487	Tubbee, Willis	46	M.	"	27
488	" Martha	42	F.	"	28
489	" Lucy	12	F.	"	29
490	" Ada	7	F.	"	30
997	Johnson, Wiley	21	M.	"	31
998	" Stella	16	F.	"	32
114					
1061	Jeff, George	21	M.	Full	33
999	Jackson, Willis	50	M.	"	34
1000	" Jameson	15	M.	"	35
1001	" Ida	13	F.	"	36
1002	" Albert	7	M.	"	37
1003	" Nixie	4	F.	"	38
1063	Willis, Tishomingo	54	M.	"	39
1283	Tonubbee, Lewis	17	M.	$\frac{7}{8}$	40
188	Billey, Ben	40	M.	full	41
1136	Tonubbee, Jackson	45	M.	"	42
1282	" Sissie	43	F.	$\frac{3}{4}$	43
1283	" Lewis	17	M.	$\frac{7}{8}$	44
1284	" Robert	14	M.	$\frac{7}{8}$	45
1285	" Murphy	10	M.	$\frac{7}{8}$	46
1286	" Lottie	4	F.	$\frac{7}{8}$	47
1138	Dixon, John	30	M.	full	48
1139	" Manie	20	F.	"	49
1140	" Ennie	2	F.	"	50
1034	Jackson, Nancy	65	F.	"	51
1035	" Bessie	6	F.	"	52
1036	" Patsey	9	F.	"	53
790	Lewis, Webb	20	M.	"	54
115					
151	Shoemaker, Jackson	48	M.	Full	55
152	" Jennie	28	F.	"	56
153	" Watson	7	M.	"	57
154	" Ernest	5	M.	"	58
155	" Manat	3	F.	"	59
156	" Ada	1	F.	"	60
157	" Rhoda	1	F.	"	61

572	Willis, John	59	M.	"	62
1145	McCormick, Sarah Jane	37	F.	"	63
142	" Hettie	9	F.	$\frac{3}{4}$	64
143	" Lizzie	11	F.	$\frac{7}{8}$	65
332	Postoak, William	20	M.	full	66
191	Simmons, Leona (wife of Wm. Postoak)	16	F.	"	67
192	" Robert	9	M.	"	68
193	" Maggie	8	F.	"	69
194	" King	6	M.	"	70
195	" Pigfoot	3	M.	"	71
196	" Manie	1	F.	"	72
1133	Taylor, Henry	23	M.	"	73
1440	" Mollie	33	F.	"	74
1091	" Nettie	12	F.	"	75
1075	Taylor, Frank	21	M.	"	76
1076	" Lulie	—	F.	"	77
116					
515	Taylor, Larence	21	M.	Full	78

Total number of persons.....78

Expenses of identification as follows:

Sixteen families at \$35.00 per family.....	\$560.00
Eighteen individuals at \$35.00 each.....	630.00

Services in identification as follows:

Seventy-eight Indians at \$5.00 each.....	\$390.00
Paid Hudson & Arnold for fourteen families at \$50.00 per family	700.00
Paid Hudson & Arnold for eighteen individuals at \$50.00 each	900.00

Total expense\$3,180.00

117

AMENDED EXHIBIT "C."

List of persons named in Amended Exhibit "B" who were brought to Indian Territory and allotted by the petitioner; the specific itemized accounts with each family being set forth in exhibit "C" of the original petition.

Roll No.	Name.	Age.	Sex.	Blood.	
928	Taylor, Will	26	M.	"	1
929	" Jennie	38	F.	"	2
930	" Elizabeth	3	F.	"	3
931	" Johnson	2	M.	"	4
932	Jeff, Alice	11	F.	"	5
332	Postoak, William	20	M.	"	6
191	Simmons, Leona (wife of Wm. Postoak)	16	F.	"	7
192	" Robert	9	M.	"	8
193	" Maggie	8	F.	"	9
194	" King	6	M.	"	10
1133	Taylor, Henry	23	M.	"	11
1440	" Mollie	33	F.	"	12
1091	" Nettie	12	F.	"	13
1075	Taylor, Frank	21	M.	"	14
1076	" Lulie	—	F.	"	15
790	Lewis, Web	20	M.	"	16
	Lewis, Mary (four persons enrolled under this name).				17
118					
151	Shoemaker, Jackson	48	M.	Full	18
152	" Jennie (wife)	28	F.	"	19
153	" Watson	7	M.	"	20
154	" Ernest	5	M.	"	21
155	" Manat	3	M.	"	22
156	" Ada	1	F.	"	23
157	" Rhoda	1	F.	"	24
1136	Tonubby, Jackson	45	M.	"	25
1282	" Sissie	43	F.	3/4	26
1283	" Lewis	17	M.	7/8	27
1284	" Robert	14	M.	7/8	28
1285	" Murphy	10	M.	7/8	29
1286	" Lottie	4	F.	7/8	30
515	Taylor, Larence	21	M.	full	31

188	Billie, Ben	40	M.	"	32
1121	Thomas, Silman	10	F.	"	33
1122	" Beckey	6	F.	"	34
1138	Dixon, John	30	M.	"	35
572	Willis, John	59	M.	"	36
1034	Jackson, Nancy	65	F.	"	37
1035	" Bessie	6	F.	"	38
1036	" Patsy	9	F.	"	39
119					
1145	McCormick, Sarah Jane	37	F.	Full	40
142	" Hettie	9	F.	$\frac{3}{4}$	41
143	" Lizzie	11	F.	$\frac{7}{8}$	42
698	Thomas, John B.	25	M.	Full	43
1063	Willis, Tishomingo	54	M.	"	44
999	Jackson, Willis	50	M.	"	45
1000	" Jameson	15	M.	"	46
1001	" Ada	13	F.	"	47
1002	" Albert	7	M.	"	48
1003	" Nixie	4	F.	"	49
14	Taylor, Stanley	5	M.	"	50
13	" Lem	10	M.	"	51

120 CITY OF WASHINGTON,
District of Columbia, ss:

I, William W. Wright, being first duly sworn, upon oath depose and say:

I am a member of the firm of Howe & Wright, the attorneys named in the foregoing and annexed petition. On the 24th day of August, 1908, I served notice upon the Governor of the Choctaw Nation of the foregoing suit by mailing a true copy of said petition, by registered mail, addressed to Green McCurtain, present Governor of the Choctaw Nation, addressed to him at McCurtain, Oklahoma.

WILLIAM W. WRIGHT.

Subscribed and sworn to before me this 24th day of August, 1908.

[SEAL.]

S. A. TERRY,
Notary Public.

Intervening Petition of J. J. Beckham.

The original intervening petition of J. J. Beckham was filed by leave of Court on April 9, 1909. Subsequently, to-wit, by leave of Court, an amendment was filed to said petition so that it now reads as follows:

In the Court of Claims.

No. 29821.

The ESTATE OF CHARLES F. WINTON, Deceased, and Others,
vs.

JACK AMOS and Others, Known as The "Mississippi Choctaws."

Intervening Petition of J. J. Beckham.

To the Honorable Chief Justice and Judges of the Court of Claims,
your petitioner respectfully represents:

1. That he is a citizen of the United States, residing at Mexia, Texas, and that he files this petition in his own right as hereinafter set forth.

2. Under the provisions of Section 27 of the Act of Congress of May 29, 1908 (Public 156), the following was authorized.

"Sec. 27. That the Court of Claims is hereby authorized and directed to hear, consider and adjudicate the claims against the Mississippi Choctaws of William N. Vernon, J. S. Bounds and Chester Howe, their associates or assigns, for services rendered and expenses incurred in the matter of the claims of the Mississippi Choctaws to citizenship in the Choctaw Nation and to render judgment thereon on the principle of quantum meruit in such amount or amounts as may appear equitable and justly due therefor, which judgment, if any, shall be paid from the funds now or hereafter due such Choctaws as individuals by the United States. The said William N. Vernon, J. S. Bounds and Chester Howe are hereby authorized to intervene in the suit instituted in said court under the provision of Section nine of the Act of April twenty-six, 122 nineteen hundred and six, in behalf of the estates of Charles F. Winton, deceased: Provided, That the evidence of the intervenors shall be immediately submitted: And Provided, further, That the lands allotted to the said Mississippi Choctaws are hereby declared subject to a lien to the extent of the claims of the said Winton and the other plaintiffs authorized by Congress to sue the said defendants, subject to the final judgment of the Court of Claims in the said case. Notice of such suit or intervention shall be served on the Governor of the Choctaw Nation, and the Attorney General shall appear and defend the said suit on behalf of the said Choctaws."

3. That your petitioner was an associate of J. S. Bounds, the identical person mentioned in said act, and also one T. A. Bounds mentioned in the petition filed in the above case by J. S. Bounds; also an associate of William N. Vernon, the identical person named in said act.

4. Your petitioner was familiar with the condition of the Choctaw Indian residing in the State of Mississippi and, by reason of his familiarity of said Indians and his knowledge of the claims of said Indians and the decisions of the Department of the Interior relative to their rights, he entered into contracts with certain Mississippi Choctaw Indians, under which he agreed to assist said Mississippi Choctaw Indians to secure their identification and enrollment in the Choctaw Nation in the Indian Territory, said contracts being first verbal agreement reduced to writing and bearing dates subsequent to said verbal agreements.

5. That the condition of the Choctaw Indians who were parties to the contracts made with your petitioner in 1901 and later dates was that of extreme poverty. They were without money or means from which money could be derived to pay for transportation from

123 Mississippi to the Choctaw Nation, or to buy food or clothing necessary to sustain and clothe themselves and their families, after their arrival in the nation; and the contracts made by your petitioner were each and every one made in good faith for the purpose of aiding and the carrying out of the law and protection of the contracting Indians. That these people were tenants in Mississippi, and under the laws of that State, it was a misdemeanor to secure the removal of persons situate as they were without the payment of any amounts due the landlord and that they were so indebted in various amounts which were necessarily paid prior to this removal.

6. That under the provisions of Sections 41, 42, 43 and 44 of the act of Congress of July 1, 1902, the Mississippi Choctaws residing in Mississippi who were included within the terms of said act were obliged to move to the Choctaw Nation within six months from the date of their identification or lose their estates in said Nation, and in compliance with the terms of his contract your petitioner moved from the State of Mississippi to the Choctaw Nation, Indian Territory, about 16 Choctaw Indians, the names of whom are hereunto attached upon a schedule marked "Exhibit A," and made a part of this petition. That in moving said Indians your petitioner paid all of the expenses, which included the costs for travel from their former homes to the railway station in Mississippi, railroad fare from their nearest station to Meridian, Mississippi, from which point a common rate of railroad fare to points in the Indian Territory had been obtained, railroad fare from Meridian, Mississippi, to Kiowa and Atoka, Indian Territory (now Oklahoma), sustenance enroute, and incidental expenses, including clothing, medicines and care, and including the expenses of an interpreter and a man to look after the wants of these people while traveling; that after arriving in Kiowa, Indian Territory, now Oklahoma, your petitioner provided houses, food, necessary furniture and other things for the Mississippi

Choctaws so moved, and purchased rights of possession to lands on some of which houses had theretofore been erected, including
124 fences and other improvements and on others of which houses and other improvements were afterwards erected, all at the expense of your petitioner, and that your petitioner furnished or caused to be furnished, general supplies consisting of food, clothing and household necessities to said Mississippi Choctaw Indians and the necessary money to permit said Indians to appear before the Dawes Commission and make proof of their establishment of residence in Indian Territory, together with their witnesses who were required to so appear, and assisted the Indians in allotting the lands so purchased by furnishing money to defray expenses to land office and resurvey by him under his contracts, and purchased for them wagons, teams, plows and agricultural implements, in some cases breaking the lands to the end that the Indians might become self-sustaining and the policy of government be carried out, furnishing seed where needed and paying for medical attendance for such parties when sick, and the funeral expenses for those who died.

7. Your petitioner purchased improvements in the Indian Territory for a number of Choctaw Indians which he moved in order that they might be able to file upon valuable and desirable land, a list of said Indians and the amount expended for each individual for improvements being hereto attached and referred to as Exhibit B.

8. That by reason of your petitioner's expenditures of money in purchasing valuable lands and improvements subsequently allotted to these Mississippi Choctaws, now in their possession and on which many of them reside, and by reason of his business ability exercised on their behalf and in their interest, said Mississippi Choctaws now have allotments of much greater value than the ordinary Mississippi Choctaw allotments; exceeding in value many thousands of dollars either the appraised value of allotment or the average value of the Mississippi Choctaw allotment and that the estate so obtained is directly due to the money furnished, the judgment exercised by your petitioner under his contract.

125 9. That your petitioner entered into written contracts with the individual Mississippi Choctaw Indians whom he moved and the amount provided for in said contract as a contingent fee for the services performed thereunder should be considered in computing the amount due petitioner for his services upon the basis of quantum meruit, together with the actual expenditures made on account of and in behalf of said individual Mississippi Choctaws which aggregate, approximately, six thousand dollars, all of which will be more particularly shown in the proof taken in support of this petition.

10. That none of the sums of money heretofore mentioned have been paid or refunded by the Mississippi Choctaw Indians, that none of them are entitled to credits, except such as appear on the schedule of account attached to this petition; that the sums were expended and accepted under contract which the said Mississippi Choctaw Indians as individuals have repudiated by act, and by failure to comply with the terms thereof, and your petitioner has at all times acted in good faith, in strict compliance with what he believed, and now believes to be the law and in justice to the defendants individuals.

11. That your petitioner is informed and believes the individuals named in the schedule made a part of this petition are a portion of the Mississippi Choctaws from whom the petitioner, the estate of Charles F. Winton, and other intrueners seek a recovery in the original petition filed in this case. That your petitioner is entitled for the reason set forth herein to a lien on the lands and money belonging to the individuals so named prior to any other person or persons whomsoever, for the reason that the lands so held were acquired with the money furnished by him are now the property of said individuals by reason of the expenditures of the money and the performance of the services as set forth herein, and that your petitioner, as he believes, has an equitable right of intervention in said suit, irrespective of the jurisdictional act set forth herein.

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Prayers.

Wherefore, Your petitioner prays:

First. That this petition may be filed and docketed as an intervening petition on case number 29,281 as referred to herein.

Second. That he may have judgment against the individuals named in the schedule attached and made part of this petition for the respective amounts expended upon their behalf, and that accounts carried in the names of families may be prorated among the members of said families.

Third. That he may have judgment for the services rendered, and that in equity the same shall be prorated between the individuals receiving the benefit thereof, and that interest may be allowed and computed from the dates shown in the schedule at the rate of 6 per cent per annum for the cash expended and advanced; that the judgments shall be decreed a lien, as provided by the jurisdictional act and for such other and further relief as to the court, in its wisdom, may seem just and equitable, and your petitioner will ever pray, etc.

J. J. BECKHAM,
Petitioner.

WILLIAM W. WRIGHT,
Attorney for Petitioner.

STATE OF TEXAS,
County of Limestone, ss:

J. J. Beckham, being duly sworn, on oath states that he has read the foregoing petition by him subscribed; that he is the petitioner named therein; that the facts stated in said petition as being of his knowledge are true and the facts stated upon information and belief he verily believes to be true.

SANDFORD SMITH.

Subscribed and sworn to before me this 5th day of April, 1909.

127 CITY OF WASHINGTON,
District of Columbia, ss:

I, William W. Wright, being first duly sworn, upon oath depose and say: On the 8th day of April, 1909, I served notice upon the Governor of the Choctaw Nation of the foregoing suit by mailing a true copy of said petition, by registered mail, addressed to Green McCurtain, present Governor of the Choctaw Nation, addressed to him at McCurtain, Oklahoma.

WILLIAM W. WRIGHT.

Subscribed and sworn to before me this 8th day of April, 1909.
[SEAL.] S. A. TERRY,
Notary Public.

128 AMENDED EXHIBIT "A."

This Schedule shows a list of the Indians brought to Indian Territory from Mississippi by J. J. Beckham and R. J. Ellington, and who were finally enrolled.

Roll No.	Name.	Age.	Sex.	Blood.
617	Sallie Dixon	58	F.	Full
618	Bettie Martin	13	F.	"
294	Bob Barcus	23	M.	"
782	Wes Amos	62	M.	"
783	Lissa Amos	58	F.	"
784	Jasper Amos	20	M.	"
785	Dora Amos	19	F.	"
786	Cleveland Amos	17	M.	"
787	Bennett Amos	14	M.	"
1362	Arden Jamison	23	M.	"
1315	Sanders Barcus	25	M.	"

EXHIBIT B.

ATOKA, I. T., Dec. 23, 1903.

Choctaw Indians.

To amt. paid out for improvements by J. J. Beckham.

Dec. 23, 1901,	Paid C. P. Standley	\$ 100.00
" 23, 1901,	" J. W. McLendon	760.00
Jan. 23, 1902,	" Joseph Dupire	105.00
" 24, 1902,	" W. Bassett	400.00
" 24, 1902,	" Sam Downing	150.00
" 24, 1902,	" W. England wk.	10.00
" 24, 1902,	" J. R. Lynch "	12.50
" 24, 1902,	" For paste and wire	75.00

\$1,612.50

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EXHIBIT C.

This Schedule gives a list of Indians identified before the Daws Commission in Mississippi, through the efforts of Petitioner and R. J. Ellington, although not removed to the Indian Territory by them.

List of Indians Identified in Mississippi in Exhibit "C" of Ellington Deposition, Who Were Subsequently Enrolled.

Roll No.	Name.	Age.	Sex.	Blood.
505	Pickens York	29	M.	Full
506	Nannie York	10	F.	"
993	Amos York	22	M.	"
994	Bettie Lee York	2	F.	"
673	Salmon Sockey	60	M.	"
674	Phoebe Sockey	58	F.	"
675	Mary Sockey	13	F.	"
163	Will Sockey	22	M.	"
1108	Rafe Sockey	24	M.	"
273	William Billy	28	M.	"
583	Sam Billy	34	M.	"
87	Robert Sweeny	26	M.	"
88	Ara Ann Sweeny	23	F.	"
89	Joseph Sweeny	2	M.	"
90	Frank Sweeny	1	M.	"

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Intervening Petition of Madison M. Lindley.

Filed by Leave of Court, May 7, 1909.

In the Court of Claims.

No. 29,821.

The ESTATE OF CHARLES F. WINTON and Others,

vs.

JACK AMOS and Others.

Intervening Petition of Madison M. Lindley.

To the Honorable the Chief Justice and Associate Justices of Said Court, Your petitioner respectfully represents:

1. That he is a citizen of the United States, residing at McAlester, in the County of Pittsburg, State of Oklahoma, and files this suit in his own right.

2. That set forth in the petitions filed in this Court by the Estate of Charles F. Winton, and by Chester Howe, jurisdiction has been conferred upon this Court by Congress to adjudicate the claims of

136 said Howe, Winton and others, and their associates and as signs for services rendered and expenses incurred in connection with the settlement of the claims of the Mississippi Choctaw Indians to citizenship in the Choctaw Nation.

3. That your petitioner was employed in the prosecution of said claims as the associate of said Chester Howe, and in the course of such employment he rendered certain legal services and spent the sum of \$200.00.

Wherefore petitioner prays that he may become a party plaintiff in said suit by intervention, and that after due proof has been filed, he may had judgment against said defendants for the amounts so advanced as expenses, and for the reasonable value of the services rendered by him, as provided in said Acts of Congress.

MADISON M. LINDLEY,
By WM. E. RICHARDSON, *Attorney in Fact.*
RALSTON, SIDDONS & RICHARDSON,
Attorneys for Petitioner.

DISTRICT OF COLUMBIA, ss:

William E. Richardson, being first duly sworn, on oath deposes and says that he is attorney in fact for the above petitioner, and as such has subscribed the same; that the facts therein stated are true to the best of his knowledge, information and belief.

WM. E. RICHARDSON.

137 Subscribed and sworn to before me this 5th day of May, 1909.

HARVEY E. WINFIELD,
Notary Public, D. C.

138 *Intervening Petition of M. M. Lindly and His Associates.*

Filed by Leave of Court, May 17, 1909.

In the Court of Claims.

No. 29,821.

THE ESTATE OF CHARLES F. WINTON, Deceased, et al.,

VS.

JACK AMOS and Others, known as the "Mississippi Choctaws."

Intervening Petition of M. M. Lindly and His Associates.

Your petitioner respectfully represents:

That he is a citizen of the United States and under the provision of the act of Congress of April 26, 1906, conferring jurisdiction in

the above action upon the Court of Claims as amended by the act of May 29, 1908, he files this petition in his own right and as an associate of Chester Howe and on behalf of those associated with him and with the said Chester Howe as hereinafter set forth.

That by act of Congress approved June 10, 1896, the commission known as the Dawes Commission created by virtue of an act of Congress approved March 13, 1893, was directed among other things to make, with a view of ultimate allotment, a complete roll of citizenship of the Choctaw Nation in the then Indian Territory, now Oklahoma.

139 That many of the Choctaw Indians to whom the lands occupied by the Choctaw Nation in Indian Territory had been granted by the United States were at that time not yet removed to said land, some of them being too poor to remove had remained in the States east of the Mississippi River, while others seeking more civilized communities than Indian Territory, lived in the States bordering on said land.

That relying upon the treaty made by the United States with the Choctaw Indians and proclaimed February 21st, 1831, and particularly upon the provision of section 2 of said treaty as well as upon the Letters Patent conveying said land, your petitioner under authority conferred upon him by contract with the organized bands of said Indians in Mississippi, as well as by individual contracts with many of those Indians who lived outside of Indian Territory, did appear on many occasions before the said Commission on behalf of many of said non-resident Indians afterward known as Mississippi Choctaws, and there urge the right of these Choctaws to be enrolled upon said citizenship rolls of said nation with the view of finally participating in the allotment of said land and the distribution of the estate of said nation. That under the law then in force he presented fully the questions there involved and upon the refusal of said Commission to hear and determine the rights of said people, he and his associates presented the matter to the United States District Courts for Indian Territory.

That at the sitting of said court at South McAlester, Indian Territory, during the year 1893 and again in the beginning of the year 1897, in an elaborate argument covering several days he

140 fully presented the questions there involved. That at about the same time the firm of Cruce & Cruce, of Ardmore, and Walter S. Field, then of Oklahoma City, attorneys, presented to the United States District Court sitting at Ardmore the same question in like manner. That about the same time Robert L. Owen, for Charles F. Winton, deceased, presented to the United States District Court sitting at Muskogee, the same question in like manner. That upon the final determination by said courts following said argument the court at South McAlester and at Muskogee held adversely to the rights of non-resident Choctaw Indians, while the court at Ardmore, being a court of concurrent jurisdiction in said Choctaw Nation, held that they were entitled to all the rights and privileges of other Choctaw Indians, notwithstanding the fact that they did not reside within the limits of said nation. That at this time he was associated

with and consulted freely with said Walter S. Field, of Oklahoma City, and that from this time on they co-operated in their efforts to secure recognition by the proper authorities of the rights of these Mississippi Choctaw.

That during the winter of 1896 and the spring of 1897 your petitioner, the said W. S. Field, and the firm of Cruce & Cruce, as well as one J. O. Pool, of Whitesboro, Texas, so persistently urged upon the said Dawes Commission the rights of nonresident Choctaw Indians under the treaty of 1830 as interpreted by the said Federal court at Ardmore that the said Commission finally assured your petitioner that it would recommend to Congress some legislation that, if enacted, would authorize said Commission to make an investigation of the rights of these people. That during the same winter

141 your petitioner and his said associates called to the attention of the President of the United States the deplorable condition of these people still living in Mississippi, while under existing treaties they should be possessed of valuable lands in Indian Territory and urged upon him the necessity for a proper protection of their rights. That the matter at the same time was, by order of the President, presented to the Commissioner of Indian Affairs, and to the Secretary of the Interior. That as a result of such agitation the Interior Department did recommend to Congress that the said Commission be authorized to make an investigation of the rights of these people and therefore Congress provided in the Indian appropriation bill of June 7, 1897, for such investigation.

That thereafter your petitioner and his said associates, as well as Charles F. Winton and his associates, again appeared repeatedly before the said Commission at its various sittings presenting the various phases of the Mississippi Choctaw question and insisting upon and urging that justice and equity be done these unfortunate people. And in the following winter the said Commission reported to Congress that these Mississippi Choctaws had a right to remove at any time to the Choctaw Nation, and thereupon acquire all the rights of other Choctaw citizens, but that as the time for making applications to said Commission for enrollment had expired it would, if these rights were to be preserved, be necessary to extend by act of Congress the time for making such applications.

That while the act of June 28, 1898, known as the Curtis act, was under consideration your petitioner prepared and submitted to each member of the House and Senate Indian Committee an argument fully setting forth the claims of these people and representing that unless some explicit provision was made for their protection their rights would be barred. That while no authority to allot land to these people was by this act conferred upon the Commission, yet the act contained sufficient recognition of their rights to, in a measure, protect them.

That thereafter the said Dawes Commission still refused to enroll or to make any record of the offer of applications made by any of said Mississippi Choctaws notwithstanding the fact was shown that many of them had removed to Indian Territory and were then bona fide residents of the Choctaw Nation.

That on the — day of July, 1898, your petitioner, for the purpose of more efficiently protecting the interests of his clients and properly presenting said question to the Commissioner of Indian Affairs, the Secretary of the Interior, the Attorney General, and, if need be, to the members and committees of Congress, by virtue of the authority contained in his contract with the various organizations and individuals, did enter into an agreement in writing with the said W. S. Field and Chester Howe, both then of Washington, D. C., a copy of which contract is herewith attached, marked Exhibit A and made a part hereof.

That thereafter throughout all the vicissitudes of Departmental and Congressional action connected herewith, he and his associates appeared before said Dawes Commission at numerous places, before the Commissioner of Indian Affairs, the Secretary of the Interior, the Attorney-General, individual members of Congress and the committees thereof presenting by oral and by written arguments
 143 and by petitions the rights and equities of these people in and to a share in said estate and everywhere urged such action as would fully protect them and all of them.

That under the provision of the contract heretofore set forth between your petitioner and Chester Howe and W. S. Field it was agreed that the said petitioner, upon his own responsibility, should employ such assistance as should become necessary in the preparation of papers, the taking of testimony, and in the performance of such other work as should be required for the purpose of properly protecting the rights and interests of these people in Indian Territory, in Mississippi, and in the neighboring States wherever resident.

That pursuant to said agreement and for the purpose above set forth he employed L. P. Hudson, James E. Arnold and Woodson Arnold, the said J. E. Arnold and L. P. Hudson operating under the firm of Hudson & Arnold. Under the terms of his agreements with said parties they were to take charge of the work connected with the making of contracts, the preparation of applications, petitions and testimony, the removal to Indian Territory and the selection of allotments by said Indians not resident in Indian Territory, and were to collect from those persons able to pay a retainer fee, such sums as appeared to be just and reasonable under all the circumstances, transmitting immediately to your petitioner the said applications, petitions, testimony and the contracts so taken, together with all money so collected.

That many of these people then claiming the rights of Choctaws were part blood Indians in fair financial circumstances, some of whom, encouraged by the prospects of final enrollment, had,
 144 after the act of 1896 and prior to the final act under which the full bloods were ~~assailed~~ their rights, removed to Indian Territory. Many of these people were able to and did pay to the said Hudson and Arnold for the benefit of your petitioner and his associates liberal retainer fees and compensation which amounted in the aggregate to a large sum.

That your petitioner, together with his associates in the city of Washington, were to urge such action on the part of the Commis-

sioner and the Interior Department as would protect the interests of these people and in case of failure to accomplish the desired result in this manner they were to appear before the members of Congress and the committees thereof and there urge such legislation as would authorize and direct the Department of the Interior to properly protect the rights of these Mississippi Choctaws, whether then resident in Indian Territory or elsewhere, and were to present the said petitions, individual applications and testimony, to the said Commissioner and other proper officers to the end that the individual applicants be finally enrolled and allotted as other Choctaws.

That for the purpose of further securing efficient service in said matter the said Chester Howe employed Samuel Powell, of Wagner, Oklahoma, to aid him in the performance of his part of said contract, and that pursuant to such employment the said Samuel Powell appeared before members of Congress and committees thereof in the interest of these people.

That pursuant to such contract the said Hudson and Arnold and the said Woodson Arnold prepared petitions and testimony for and took contracts with a large number of individual Mississippi Choctaw Indians and collected pursuant to such contract a sum
145 of money in excess of \$15,000, and that your petitioner and his associates have at all times under the terms of said contracts faithfully and efficiently represented the interests of those persons so contracted with.

That the number of individual Mississippi Choctaw Indians represented by your petitioner and his associates and who were subsequently enrolled and allotted numbered more than six hundred, while a great majority of the remainder of these persons enrolled and allotted were represented by them through their employment as attorneys for the bands or towns to which the said Indians belonged, and all of said allotted persons profited by the services of your petitioner and his associates in that the said services contributed materially to the final success of their struggle for allotment.

That upon the final passage of the act authorizing the removal to Indian Territory and the enrollment of these people the said Hudson and Arnold, pursuant to the employment heretofore made by your petitioner proceeded to the State of Mississippi and there appeared before the said Commission with the various applicants for identification and took charge of them at the hearing to the end that their status and rights as Mississippi Choctaws might be and were properly and fully presented for consideration.

That all of the persons nonresident in Indian Territory in 1898 presented to and enrolled by the Commission under the provisions finally enacted by Congress were full blood Indians, indigent and in debt and totally unable to bear any portion of the expense of such presentation or to remove themselves to Indian Territory, and that
146 in the matter of procuring the attendance of these parties and their witnesses at their special request this petitioner and his associates through the said Hudson and Arnold necessarily expended large amounts of money. That thereafter, in order that the rights of these Indians might be fully protected, your petitioner

and his associates at the request of said Indians paid for them their indebtedness in Mississippi so that they might remove from the State without hindrance, procured for them necessary food and clothing, and transferred them to and maintained them in Indian Territory until they were finally enrolled and allotted and had become self supporting.

That in the performance of these services they necessarily expended large amounts of money as is fully set forth in the accounts rendered in the petitions and evidence of the said J. E. Arnold and L. P. Hudson and Woodson Arnold.

Your petitioner further shows that in the proper performance of the services hereinbefore set forth

removal, and that thereafter to further carry on the said work your petitioner and his said associates, through the said Chester Howe and J. E. Arnold, borrowed from various persons large sums of money which were also properly and necessarily expended in the removal, allotment and support of these people to the end that they might comply with the terms of the law providing for their allotment.

That the sum hereinbefore set forth as having been collected as fees by the said Hudson and Arnold and Woodson Arnold, and being the funds of the said petitioner and his associates under the terms of the contract between them and by the terms of the employment of the said Hudson and Arnold and Woodson Arnold, was all expended properly and necessarily in the matter of said identification and he and his associates expended large sums of money in the necessary expense of traveling to and from the city of Washington and maintaining themselves therein. That they further necessarily spent large sums of money in traveling expenses in the performance of said services within the Indian Territory and to and from the State of Mississippi.

147 Your petitioner further represents that as the result of the services so rendered by him and his said associates as hereinbefore set forth and in conjunction with the like services in said matter rendered by Charles F. Winton and his associates, each and every of those Indians now known as Mississippi Choctaws who have been identified and duly enrolled and allotted by the Commission to the Five Civilized Tribes have become possessed of an estate worth in excess of \$5,000, and that your petitioner and his associates have spent a great portion of their time without compensation and at great expense for a period of more than fourteen years in the accomplishment of this result. That your petitioner and his associates representing as hereinbefore set forth the entire body of Mississippi Choctaws are entitled to be compensated for their services out of the estates so obtained in what was formerly Indian Territory, now Oklahoma, for each and every such Choctaw Indian finally enrolled and allotted in the Choctaw Nation. That in computing such compensation consideration should be given to the financial condition of these people prior to such allotment and the said computation made upon the basis of a contingent fee.

Your petitioner further shows that under and by virtue of the

individual contracts entered into by the individual Mississippi Choctaws with him and his associates they are entitled to further compensation for the specific services rendered to each of said individuals in the procurement of his identification, his removal to Indian Territory and his final allotment together with all of the expenses attendant thereto, as well as upon his maintenance and support thereafter. That your petitioners are entitled to have this compensation computed upon the basis of a contingent contract in view of the fact that the same must necessarily be payable out of the estate procured for these individuals who were, prior to the obtaining of such an estate, in indigent circumstances.

Wherefore, your petitioner prays that he and his associates and his employees may have judgment for the value of their services rendered herein together with their expenses incurred in the rendition of such services, together with all disbursements made by them as hereinbefore set forth with interest thereon from the time each of said items became due and payable. Your petitioner further prays that the amount found due him and his associates may be properly proportioned under the contract heretofore entered into between themselves, and that separate judgment be rendered therefor as well as for the services shown by the testimony to have been rendered by those persons employed by your petitioner and that similar provision be made for the payment of persons shown to have been associated with your petitioner other than those connected with him by contract and that the amounts of money, together with interest thereon borrowed by your petitioner and his associates and employees be separately ascertained and that individual judgments be rendered in favor of the persons from whom such money was borrowed together with legal interest from the date of said loan.

L. A. PRADT,
Attorney for Petitioner.

RALSTON, SIDDONS & RICHARDSON,
Of Counsel.

M. M. LINDLEY.

150 STATE OF OKLAHOMA,
Pittsburg County, ss:

M. M. Lindly being duly sworn says that he is petitioner above named; that he has read the foregoing petition and knows the contents thereof, and that the same is true of his own knowledge except as to matters therein stated upon information and belief and as to those matters he believes it to be true.

M. M. LINDLY.

Subscribed and sworn to before me this 12th day of May, 1909.

F. D. UNGLES,
Notary Public.

My commission expires Oct. 2, 1912.

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"EXHIBIT A."

This contract made and entered into this — day of July, 1898, by and between M. M. Lindly, of South McAlester, Indian Territory, and Walter S. Field and Chester Howe, of Washington, D. C.

Witnesseth, That whereas the said M. M. Lindly holds contracts and powers of attorney from various individual nonresident Choctaw Indians and from the bands and organizations of said nonresident Choctaws residing in Mississippi and known as Mississippi Choctaws as well as from various individual Mississippi Choctaws residing in Indian Territory who are entitled under the various treaties to share in the lands and funds of the Choctaw Nation, in Indian Territory, and the said Lindly being desirous of securing the assistance of the said Field and Howe in procuring such action on the part of the United States as will result in the establishment of the right of said Indians to share in the property of said Choctaw Nation, it is agreed that he said Lindly shall assign to each of said Field and Howe the one-fourth part of each and every of his said contracts, and that he, the said Lindly, will employ such assistance as shall be necessary to properly prepare the petitions and papers of said persons and to take new contracts with such other persons as may desire to employ the said parties to present and prosecute their claims to Choctaw citizenship. And the said Lindly further agrees to properly present by himself or through his employees all cases coming hereunder to the Dawes Commission and to account to the said Walter S. Field and Chester Howe for all money collected hereunder remitting to each of them the one-fourth part thereof, and the said Walter S. Field and Chester Howe hereby agree that they will present the cause of said Mississippi and nonresident Choctaws to the proper authorities to the end that appropriate legislation and Departmental action protecting the rights of said Indians in and to the property of said Choctaw Nation may be secured.

M. M. LINDLY.
WALTER S. FIELD.
CHESTER HOWE.

241 *Intervening Petition of W. S. Fields and His Associates.*

Filed by leave of Court June 9, 1910.

In the Court of Claims.

No. 29,821.

THE ESTATE OF CHARLES F. WINTON, Deceased, et al.,

VS.

JACK AMOS and Others, Known as the "Mississippi Choctaws."

Intervening Petition of W. S. Field and His Associates.

Your petitioner respectfully represents:

That he is a citizen of the United States, resident of the District of Columbia, and that under the provision of the Act of Congress, approved April 26, 1906, (34 Stat. L. 137,140), as amended by the act of May 29, 1908, (35 Stat. 444,457), conferring jurisdiction in the above entitled cause upon this Court, he files this petition in his own right and as an associate of M. M. Lindly, Chester Howe and others, parties to a certain contract, and whose rights were clearly defined therein, and which contract was made pursuant to authority conferred upon M. M. Lindly, under and by virtue of an agreement entered into by and between said Lindly, an attorney at law of McAlester, Oklahoma, and the Choctaw Tribe of Indians, residing in the State of Mississippi, acting through the representatives

242 of its three bands, and which three bands comprised all those Indians known as "Mississippi Choctaws," residing in the State of Mississippi, and which agreement is hereinafter more fully set forth and described.

By act of Congress approved June 10, 1896, authority was conferred upon a legislative commission, known as the Dawes Commission, to prepare rolls of members of the Choctaw and Chickasaw tribes, preparatory to the division in severalty of the property theretofore and then held in common by the Choctaw and Chickasaw Nations; that immediately upon the enactment of said legislation a controversy arose as to the rights of those Choctaw Indians, residing in the State of Mississippi and known as "Mississippi Choctaws," to share in said property. At the solicitation of representatives of the three bands of Choctaw Indians, known as "Mississippi Choctaws," and resident in the State of Mississippi, said Lindly sent to the State of Mississippi an agent or agents to negotiate with the representatives of said three bands of "Mississippi Choctaws" to represent the "Mississippi Choctaws" before said Commission, the Courts and Congress of the United States in the prosecution of their claim to individual shares of said common property; that during the month of December, 1896, said agent or agents of said Lindly met the representatives of the said three bands of "Mississippi Choctaws," in Mississippi, and

drafted an agreement with said representatives, by the terms and provisions of which the said Lindly was authorized to prosecute the claims of all "Mississippi Choctaws" before said Commission, the Courts and the Congress of the United States to individual shares in said common property for a fee of twenty-five per cent of the value of the property recovered; that said "Mississippi Choctaws"

243 were then in an impoverished condition and were without funds with which to pay any part of the expenses of prosecuting their claims and that the twenty-five per cent stipulated to be paid in said agreement to the said Lindly was in payment of expenses to be advanced in the prosecution of said cases as well as the compensation to be paid said Lindly for services rendered; that thereafter, said agreement was duly acknowledged by the said Lindly before a Judge of the United States Court in Indian Territory and in January, 1907, said agreement was acknowledged by the representatives of the said three bands of "Mississippi Choctaws" before the judge of a Court of Record at Meridian, Mississippi. Your petitioner assisted in defraying the expenses incident to the securing and making of this agreement, and it was then understood and agreed between petitioner and the said Lindly that they were to be equal beneficiaries under said agreement.

Your petitioner further represents that during the year 1896, and during the pendency of the negotiations leading up to the signing of said agreement, and thereafter, your petitioner and the said Lindly, prepared and presented to the said Dawes Commission the claims of certain "Mississippi Choctaws," which were urged as "test cases," and upon the determination of which depended the rights of all other "Mississippi Choctaws;" that said petitions, and briefs in support thereof, were prepared by your petitioner and the said Lindly; that your petitioner appeared before the Commission with the said Lindly in advocacy of the rights of said claimants; that the said Lindly orally argued said cases on diverse and sundry occasions and at various places before said Commission and used his utmost skill and best endeavors to secure for them their just rights to individual shares in said property.

244 Your petitioner further represents that under and by virtue of the authority conferred upon said Dawes Commission by the act approved June 10, 1896, said Commission was required to determine the rights of all "Mississippi Choctaws," and that in rendering such decision they denied the rights of all such Indians resident in the State of Mississippi; that there were several thousand such claimants thus denied. Under the authority contained in said act, appeals were authorized to the United States District Court from the decision of said Dawes Commission. By agreement with the then attorneys for the said Nations, test cases were instituted in the United States District Courts in the then Northern Judicial District sitting at Muskogee, in the then Central Judicial District sitting at South McAlester, and in the then Southern Judicial District sitting at Ardmore. Your petitioner and the said Lindly were present at the argument of each of said cases at said places, and the said Lindly participated in the argument and presentation of the rights of said

"Mississippi Choctaws" to share in said property at the hearing of said case at South McAlester, and your petitioner personally participated in the argument and presentation of the cases at Ardmore; that the judges of the United States Court at South McAlester and Muskogee decided said cases adversely to the rights of the claimants; that the judge of the United States Court sitting at Ardmore decided said cases favorably to the rights of the claimants. Thereafter, your petitioner and the said Lindly presented the question of the rights of said "Mississippi Choctaw" claimants to the Indian Committees of the House and Senate of the Congress of the United States, and to the individual members thereof, and as a result of the efforts of your petitioner and the said Lindly and the effect of said favorable
245 decision procured by them from the United States Court, sitting at Ardmore, provision was included in the Act approved June 28, 1898, (30 Stat. at Large, 495), intended to protect the rights of the said "Mississippi Choctaws."

Your petitioner and the said Lindly then realized that a proper prosecution of the individual claims of the "Mississippi Choctaws" would entail a large amount of work, making it necessary for them to procure assistance. Accordingly, an offer was made to Chester Howe, then an attorney at law, with offices in the City of Washington, D. C., who was then actively engaged in practice before the Interior Department, to associate himself with petitioner and the said Lindly in the prosecution of said claims. As a result of said offer, an agreement was entered into between the said Lindly, your petitioner and Chester Howe, a copy of which is hereto attached, marked "Exhibit A," and made a part of this petition. Under said agreement your petitioner and the said Chester Howe were each to receive one-fourth of whatever amount was recovered from each and every "Mississippi Choctaw" whose claim was successfully prosecuted, it being at that time understood that the said Lindly had agreed to compensate J. E. Arnold, L. P. Hudson, Woodson Arnold, and John London for services rendered and to be rendered by them in connection with the procuring of contracts and the prosecution of said claims and it was provided that the said Lindly should have as his share of said fees, one-half of the amount recovered, out of which he was to pay the said J. E. Arnold, Woodson Arnold, L. P. Hudson and John London, for the services theretofore and thereafter rendered and to be rendered by each of them.

Your petitioner further represents that shortly after W. A. Jones assumed the duties of Commissioner of Indian Affairs in the
246 year 1897, petitioner and Chester Howe presented to him the agreements entered into with the representatives of the "Mississippi Choctaws," for approval by the Department, as required by Section 2103 of the Revised Statutes of the United States; that there was present at said conference W. A. Jones, then the Commissioner of Indian Affairs, George A. Ward, then attorney for the Indian Bureau, Chester Howe, and your petitioner; that after consideration of the matter, it was thought doubtful if said agreement came properly within the provisions of Section 2103 of the Revised Statutes of the United States; that the subject matter was a controversy between

the bands of "Mississippi Choctaws" and the members of the Choctaw Nation residing in the then Indian Territory, and further because the members of the three bands of "Mississippi Choctaws" residing in the State of Mississippi were citizens of the United States, and therefore they were fully possessed of contractual rights and that approval by the Department of agreements made with them was unnecessary.

Your petitioner, Chester Howe, and M. M. Lindly then decided to take, in addition to the contract with the representatives of said three bands of Indians, individual contracts. Accordingly, arrangements were made whereby L. P. Hudson, J. E. Arnold, Woodson Arnold and John London were to secure individual contracts with the members of the bands of "Mississippi Choctaws." At this time your petitioner, Chester Howe, and M. M. Lindly were representing numerous Choctaw and Chickasaw claimants residing in Indian Territory and whose claims had either been denied or not acted upon by the said Dawes Commission. From these claimants your petitioner and his

247 associates were to receive fees aggregating several thousand dollars. These fees were collected and the money used in defraying the expenses of taking the individual contracts with

the members of the said bands of "Mississippi Choctaws," residing in the State of Mississippi, and your petitioner represents that each and every contract taken by the said J. E. Arnold, Woodson Arnold, L. P. Hudson, and John London with a "Mississippi Choctaw" was taken by them as the agent or agents of your petitioner, Chester Howe and M. M. Lindly and were secured as a result of said band contracts and in accordance with the said contract hereto attached and marked "Exhibit A;" that the expenses of taking said contracts were defrayed out of the money belonging to your petitioner, Chester Howe and M. M. Lindly, and that said J. E. Arnold, Woodson Arnold, L. P. Hudson, and John London have not now and never have had any interest in any contract taken by any of them with any "Mississippi Choctaw," other than the interest they had under and by virtue of an understanding and agreement they had with M. M. Lindly whereby they were to receive as their share of said fees one-fourth of the amount recovered.

Your petitioner recently learned that the individual contracts taken by the said J. E. Arnold, Woodson Arnold, L. P. Hudson and John London, or a part of them, with individual Choctaws, and which individual contracts were secured as a result of the contract with the three bands, were either taken in triplicate, or subsequent contracts were taken with the same Indians by said J. E. Arnold, Woodson Arnold and L. P. Hudson, and that said contracts, secured in triplicate, were sold or money raised or hypothecated as security for loans by either J. E. Arnold, Woodson Arnold and L. P. Hudson, or either of them, to individuals and banks residing and located

248 in the then Indian Territory, now Oklahoma and Texas; that your petitioner is reliably informed that one set of said contracts were either sold to or deposited with the Bankers National Bank, of Ardmore, Oklahoma, by the said J. E. Arnold, and that upwards of twenty thousand dollars was realized thereon; that the

two remaining sets of contracts were disposed of to other parties to your petitioner unknown; that neither the said J. E. Arnold, Woodson Arnold, or L. P. Hudson had any authority to sell and dispose of said contracts or to pledge them as security; that none of the money realized by them was ever paid to your petitioner, or to his knowledge to M. M. Lindly, but your petitioner is informed that the said Chester Howe did receive a part of said money.

Owing to the construction of the act of June 28, 1898, by the Commission and the Department, your petitioner and his associates, Howe and Lindly, were unable to successfully prosecute the claims of said "Mississippi Choctaws" before said Commission and the Department, and during the sessions of Congress in 1899, 1900, 1901 and 1902, inclusive, they made repeated efforts to secure the enactment of legislation referring the claims of said "Mississippi Choctaws" to the Court of claims or legislation directing the Secretary of the Interior to enroll said "Mississippi Choctaws," and give them their individual distributive shares of said property; that during the year 1902, your petitioner and his associates, acting in conjunction with others, secured the inclusion of a provision in the act approved June 1, 1902, and known as the "supplemental agreement" with the Choctaws and Chickasaws, which provision protected the rights of those people; that pursuant to said legislation, about nineteen hundred of

249 said "Mississippi Choctaws" were enrolled by the Commission and the Department and have since received distributive shares of said estate and are now joint beneficiaries of the lands and funds now held by the United States for them; that in the procurement of said legislation and the prosecution of said claims, your petitioner and his associates, Chester Howe and M. M. Lindly, expended large sums of money, devoted nearly eleven years of time and work to the prosecution of said claims, and except for their efforts in behalf of said "Mississippi Choctaws," none of said "Mississippi Choctaws" would have secured any share in the common property of the Choctaws and Chickasaws in Oklahoma; that the individual shares received and to be received by each of the nineteen hundred "Mississippi Choctaws" who have enrolled on the citizenship rolls of the Choctaw Nation, are worth in excess of six thousand dollars; that your petitioner and his associates, Lindly and Howe, are entitled to be compensated for their services under said band contract out of each and every estate so obtained, for each and every "Mississippi Choctaw" enrolled and who has received and is to receive a distributive share in said estate; that in computing such compensation, consideration should be given to the impoverished condition of those people at the time the said M. M. Lindly entered into said agreement with the three bands of Mississippi Choctaws, to the fact that said claims were prosecuted at the expense of your petitioner and his associates and that their fee was entirely dependent upon the recovery of the property rights of said "Mississippi Choctaws."

Your petitioner further shows that under and by virtue of the individual contracts taken by the said J. E. Arnold, Woodson Arnold, L. P. Hudson and John London, as agents or representatives
250 of your petitioner, M. M. Lindly and Chester Howe, your petitioner and his said associates are entitled to further com-

pensation for the specific services rendered to each of said individuals in the procurement of his identification, and his final allotment together with all the expenses incident thereto. That petitioner and his associates are entitled to have this compensation for services rendered computed upon the basis of a contingent contract.

Wherefore, your petitioner prays:

(a) That he and his associates, M. M. Lindly and Chester Howe, and their agents and representatives, J. E. Arnold, Woodson Arnold, L. P. Hudson and John London, may have judgment for the value of their services rendered and expenses incurred and disbursements made by them in the prosecution of the claims of all "Mississippi Choctaws" under the agreement with the representatives of the said three bands, which three bands represent all the Choctaw Indians residing in the State of Mississippi, together with interest thereon from the date of the procurement of each individual right.

(b) That your petitioner and his associates, Chester Howe and M. M. Lindly, and their agents and representatives, J. E. Arnold, Woodson Arnold, L. P. Hudson, and John London, may have additional judgment for services rendered to, and money expended for, each and every person with whom individual contracts were made by your petitioner and his associates or either of their agents or representatives and which persons were represented individually by either your petitioner or his associates or any of their said agents or representatives and whose enrollment as Choctaw Indians was directly attributable to the efforts of your petitioner or his associates or either said agents or representatives.

251 (c) That separate judgments be rendered in favor of your petitioner and his associates and their said agents or representatives upon the following basis: to your petitioner twenty-five per cent of whatever amount is adjudged to be due your petitioner and his associates and their said agents or representative; to the estate of Chester Howe twenty-five per cent; to M. M. Lindly twenty-five per cent; to J. E. Arnold, Woodson Arnold, L. P. Hudson, and John London twenty-five per cent, to be divided among them as may seem just and proper.

WALTER S. FIELD.

WEBSTER BALLINGER,
Attorney for Petitioner.

DISTRICT OF COLUMBIA, ss:

Walter S. Field, being first duly sworn on oath deposes and says that he is the petitioner above named; that he has read the foregoing petition by him signed and knows the contents thereof; that the matters and things therein stated of his own personal knowledge are true and that those stated upon information and belief he believes to be true.

WALTER S. FIELD.

Subscribed and sworn to before me this sixth day of June, 1910.

[SEAL]

L. M. FOX,

Notary Public, D. C.

My commission expires May 10, 1910.

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"EXHIBIT A."

This contract made and entered into this — day of July, 1898, by and between M. M. Lindly, of South McAlester, Indian Territory, and Walter S. Field and Chester Howe, of Washington, D. C.

Witnesseth, That whereas the said M. M. Lindly holds contracts and powers of attorney from various individuals non-resident Choctaw Indians and from the bands and organizations of said non-resident Choctaws residing in Mississippi and known as Mississippi Choctaws as well as from various individual Mississippi Choctaws residing in Indian Territory who are entitled under the various treaties to share in the lands and funds of the Choctaw Nation in Indian Territory, and the said Lindly being desirous of securing the assistance of the said Field and Howe in procuring such action on the part of the United States as will result in the establishment of the right of said Indians to share in the property of said Choctaw Nation, it is agreed that the said Lindly shall assign to each of said Field and Howe the one-fourth part of each and every of said contracts, and that he, the said Lindly, will employ such assistants as shall be necessary to properly prepare the petitions and papers of said persons and to take new contracts with such other persons as may desire to employ the said parties to present and prosecute their claims to Choctaw citizenship. And the said Lindly further agrees to properly present by himself or through his employees all cases coming hereunder to the Dawes Commission and to account to said Walter S. Field and Chester Howe for all money collected hereunder, remitting to each of them the one-fourth part thereof, and the said Walter S. Field and Chester Howe

253-285 hereby agree that they will present the cause of said Mississippi and non-resident Choctaws to the proper authorities to the end that appropriate legislation and Departmental action protecting the rights of said Indians in and to the property of said Choctaw Nation may be secured.

M. M. LINDLY,
WALTER S. FIELD,
CHESTER HOWE.

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Intervening Petition of John London.

Filed by Leave of Court February 23, 1912.

In the Court of Claims, United States of America.

No. 29,821.

THE ESTATE OF CHARLES F. WINTON, Deceased, et al.,

VS.

JACK AMOS and Others, KNOWN as the "MISSISSIPPI CHOCTAWS,"

Intervening Petition of John London.

Your petitioner respectfully represents:

That he is a citizen of the United States and now is and was at the time and times set forth herein, an attorney at law, duly admitted to practice in the courts of the United States, and that he was well acquainted with the conditions in Mississippi and with the "Mississippi Choctaws" as a class. That under the provisions of the Act of Congress of April 26, 1906, conferring jurisdiction in the above action upon the Court of Claims as amended by the Act of May 29th, 1908, he files this petition in his own right and as an associate of Chester Howe and of Walter S. Field and M. M. Lindly, associated with the said Chester Howe as set forth in the petitions of the said M. M. Lindly and Walter S. Field heretofore filed.

That in the year 1897 the Choctaw tribes of Indians in the State of Mississippi, being then organized into three bands or towns and being desirous of securing for its individual members the right to share in the tribal property in the Indian Territory, requested M. M. Lindly, intervener herein, to go to Mississippi for the purpose of arranging with the said band for the proper representation of their members before the proper United States authorities. That in pursuance of said request your petitioner went to the State of Mississippi at five different times and went from Fort Smith, Ark., and spent in the work of the said "Mississippi Choctaws," a total of ten months, and went from man to man and from house to house, and there in conjunction with J. E. Arnold, intervener herein, who was then in Mississippi, procured from the said three bands of Indians there residing, and subsequently known as the "Mississippi Choctaws," properly executed contracts under Section 2103 of the Statutes of the United States, authorizing him, the said M. M. Lindly, his associates and assigns, to appear in their behalf and in behalf of the individual members of the said bands before the various departments of the United States Government, the courts and the Congress and its various committees and wherever else necessary, and there to urge their and each of their rights to citizenship in the Choctaw nation, to the end that they, the said Mississippi Choctaws, might be, by the proper authorities accorded all the rights, privileges and immunities

of other citizens of the Choctaw nation and be permitted to participate in the allotment of land and the distribution of the estate of the Choctaw nation in the Indian Territory. That at the same time for the said Lindly and at his request and in his name, they, the said J. E. Arnold and your petitioner, secured from a large number of the heads of families, comprising the three bands of the Choctaw Indians,

properly executed powers of attorney, authorizing the said
288 Lindly to appear for them and members of their families before the tribunal above set forth for the purpose of protecting the rights of the said persons in and to their share of the common property of the Choctaw nation in the Indian Territory. That in each and all of said contracts and powers of attorney so executed, it was agreed that said Lindly and his associate and assigns should receive for such services so to be rendered a sum equal to twenty-five per centum of the value of all the property received by each and every person included within the terms of the said contract as a result of their enrollment as citizens of the Choctaw nation in the Indian Territory.

That at the time the said contracts were executed the said Arnold was without funds and wholly insolvent; that the said Lindly gave the said Arnold money for the payment of all expenses of the taking of the said contracts and powers of attorney, but the same so given to the said Arnold not being sufficient for that purpose, this petitioner paid from his own funds the remainder amounting to the sum of five thousand two hundred dollars, which amount was a necessary and reasonable expenditure.

That the said powers of attorney and the said band contracts were by your petitioner and the said Arnold, delivered to the said Lindly on or about the 15th day of July, 1897, and it was mutually agreed by and between the said Lindly and your petitioner and the said Arnold that your petitioner should present the Mississippi Choctaws and each and every one of them, and their causes to the Dawes Commission at such time and times as it might require for the purpose of securing appropriate action by the said Commission and that the said Arnold should assist by notifying the said Mississippi Choctaws of the date or dates when they should be required to attend before

the said Commission and by bringing the applicants before
289 the said Commission in case they were too poor, too ignorant or too superstitious to attend upon their own motion. For such services, so to be rendered, that petitioner and the said Arnold were each to receive one-third of whatever the said Lindly finally received, it being understood that the said Lindly and W. S. Field were at that time jointly interested in the said contract. It was further understood and agreed between all the parties hereto that the share of the said J. E. Arnold should, however, be subject to a deduction for any and all amounts of cash advanced him by either your petitioner or the said Lindly for the purpose of enabling him, the said Arnold, to secure the attendance of the Indians before the said Commission, and that in the final division of the proceeds, the share of each, your petitioner and the said Lindly, should be increased

by the sum so advanced for such purpose, together with lawful interest.

That thereafter it was deemed advisable and was agreed by said Lindly and his associates, including this petitioner, to take other contracts supplemental to the land contracts above mentioned, and that in pursuance of said agreement, contracts were so taken by your petitioner from all adults and heads of families by them brought before the Dawes Commission, and also from others who came of their own volition, but whom your petitioner represented and provided with a written application for the information of himself and the said Commission. That the total number of the contracts so taken supplemental to the said land contracts with full blood Mississippi Choctaw adults and heads of families was more than six hundred, as will appear from the evidence in this cause.

Your petitioner further shows that thereafter, and in accordance with the agreement above mentioned and described, he appeared before the Dawes Commission when, under the various acts of Congress, it was considering the rights of the said Mississippi Choctaws to share in the funds and lands of the tribe in the Indian Territory, and that he there presented the laws and treaties relating thereto and further showed to the said Commission the unfortunate state and condition of the said people and the impossibility of dealing with them and particularly with the full-blooded element, if it should be held to be necessary for them to show their ancestry and descent. That he further presented to the Commission various full-blood members of the said tribe and bands since enrolled as the Mississippi Choctaws and furnished the said Commission with all the necessary information for them to have in the final identification and enrollment of the said Indians upon the Mississippi Choctaw rolls.

Petitioner further alleges that the Commission exhibited a marked antagonism towards said Indians and refused to permit your petitioner or any attorney to come before the said Commission as a representative of the said individual Mississippi Choctaws. That your petitioner thereupon, in order that the rights of the said full bloods might be fully protected, provided each head of a family with a type-written application setting forth his full rights and equity, and instructed him to present the same to the Commission when he appeared before it for identification. That of the approximately nine hundred heads of families and adults representing the entire list of Mississippi Choctaws finally identified and enrolled, your petitioner provided more than nine hundred with the necessary application above set forth, and your petitioner is informed and verily believes that each person so supplied with such application duly verified did present the same to the Commission, and that the said Commission, in a very large measure secured the information upon which they based their identification and enrollment from applications so provided by your petitioner. That the form of the application so used as above set forth, was furnished by the said W. S. Field and M. M. Lindly to your petitioner, and a copy thereof is hereto attached marked "Exhibit A." and made a part of this petition. That wherever said Commission refused the enrollment of any

of said applicants, your petitioner immediately provided for an appeal in said cause by having properly executed and verified thereof and therefore to the Commissioner of Indian Affairs, which, when so executed was forwarded by him to the said M. M. Lindly. That forms of said petition were furnished him by the said interveners, W. S. Field and M. M. Lindly, and a copy of one of said petitions is hereto attached marked "Exhibit B" and made a part hereof.

Your petitioner further shows that the majority of said full bloods were so destitute or ignorant or superstitious that they were with great difficulty and expense induced to present themselves before the said Commission for identification. That in the said matter of procuring their attendance, J. E. Arnold assisted materially and seemed to be amply provided with funds from some source with which to accomplish the desired end.

Your petitioner further alleges that sometime during the year 1898, he was informed by M. M. Lindly that it had become necessary to associate in the said business one Chester Howe, of Washington, D. C., but that the old agreement theretofore existing between said Lindly and your petitioner would not be disturbed thereby, but that the said J. E. Arnold was about to form a partnership with one L. P.

292 Hudson for the purpose of conducting a citizenship business generally in connection with and as agent for said M. M. Lindly, and that thereafter it was not improbable that the services of your petitioner would not be required to any great extent in the Mississippi Choctaw matter. That during the conversation the said J. E. Arnold appeared and there, in the presence of said Lindly and your petitioner admitted the truth of the statements above made and it was agreed that your petitioner should continue the representation of the Mississippi Choctaws in Mississippi before the Dawes Commission until the matter of their identification, then in process, should be completed, and whatever payments for any and all services rendered under the contracts above set forth should be secured, that your petitioner should receive under the contract above set forth full value for all the services rendered by him.

Your petitioner further shows that during the early part of the conduct of this business, the said Arnold represented himself to the said Mississippi Choctaws and all persons with whom he came in contact that he was associated with Walter S. Field at Washington, D. C., M. M. Lindly at South McAlester, Indian Territory, and also your petitioner, and, at a later date, with Chester Howe at Washington, D. C.

Your petitioner further shows that after the organization of the firm of Hudson and Arnold, in an attempt to learn from the said Arnold something of the then condition of the said business, was informed by the said Arnold that all the six hundred or seven hundred individual contracts heretofore made by the full-blooded Choctaws, as above stated, had been delivered to him by the said M. M. Lindly for the purpose of having them retaken under the new acts of Congress, and that the firm of Hudson and Arnold had, at that time,

293 as agents for said Lindly, secured the re-execution of all of the said contracts for the benefit of the said Lindly and his associates.

Your petitioner further shows that during all the time hereinbefore mentioned and set forth, the said Arnold was acting as an agent for the said Lindly in the matter of procuring the enrollment of Choctaw citizens other than those set forth before, and that he was informed by the said Arnold that the money expended by him in procuring the attendance of the full-blooded Choctaw Indians (Mississippi) before the Dawes Commission, as hereinbefore stated, was procured from said business, but that the same was insufficient and your petitioner at various times was compelled to and did advance to the said business money to assist in the said matter and that the amount so advanced for such purpose was and is the sum of five thousand two hundred dollars, and that in the performance of said services hereinbefore stated he expended large sums in traveling to and from Mississippi to the Indian Territory and other places, the amount of which is the sum of five thousand dollars.

Your petitioner further shows that as a result of the services so rendered by him and his associates, each and every one of these Indians, known as the Mississippi Choctaws, who have been identified and duly allotted and enrolled by the Commission to the Five Civilized Tribes have become possessed of an estate worth in excess of six thousand dollars, and that your petitioner and his associates have spent much time without compensation and have been to great expense in the accomplishment of this result.

That your petitioner and his associates, representing as herein set forth, the entire body of the Mississippi Choctaws are entitled to be compensated for their services out of the estate so obtained in
294 what was formerly known as the Indian Territory, now

Oklahoma, for each and every such Mississippi Choctaw Indian family allotted and enrolled in the Choctaw nation. That in computing such compensation, consideration should be given to the financial condition of these people prior to the allotment and the said compensation should be based upon the basis of a contingent fee.

Wherefore, your petitioner prays that he and his associates may have judgment for the value of their services rendered herein, together with their expenses incurred in the rendition of such services together with all disbursements made by them, as hereinbefore set forth, with interest thereon from the time that each item became due and payable.

Your petitioner further prays that the amount found due him and his associates may be properly apportioned under the Jurisdictional Act herein and that a separate judgment may be rendered therefor.

M. S. FARMER, JR.,

Attorney for Intervener.

STATE OF ARKANSAS,
Sebastian County:

John London, being first duly sworn, says that he is the intervener in the above-mentioned case, and that the facts stated in the foregoing petition are true to the best of his knowledge, information and belief.

JOHN LONDON.

Subscribed and sworn to before me this 4th day of December, 1911.

[NOTARIAL SEAL.]

JOE H. LINDSEY,
Notary Public.

My commission expires April 20th, 1915.

295

"EXHIBIT A."

Before the Commission to the Five Civilized Tribes.

Sitting at Mississippi.

In the Matter of Application of — — — for Identification and Enrollment as a Mississippi Choctaw Indian, — — — in Indian Territory.

The petition of — — — respectfully represents that he is a Mississippi Choctaw Indian by blood, that he is a direct lineal descendant of — — —, a full-blood Choctaw Indian residing upon the Choctaw reservation in the State of Mississippi, whose name is — — —.

That the above-named — — — is also a full-blood Choctaw Indian, who was, during his life time, duly and regularly married to a full-blood Choctaw Indian woman, and that your petitioner is a direct descendant from the issue of said marriage.

Your petitioner further represents that he was on or about the — day of — — — duly and regularly married to one — — — and that there has been born, as the issue of said marriage, now living, the following children, namely, — — — aged — years; — — — aged — years.

Your petitioner further represents that he has been a resident of the old reservation in the State of Mississippi for many years; in fact, that his ancestors lived upon said reservation before him and that he has continued to reside in that locality ever since. That he is now desirous of availing himself of his rights in the Indian

296 Territory, and makes this application for purpose of being identified and enrolled and allotted as a Mississippi Choctaw Indian. He therefore prays that he be so identified and enrolled.

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"EXHIBIT B."

Before the Commissioner of Indian Affairs, Washington, D. C.

In the Matter of the Enrollment of J. F. RILEY et al., as Members of the Choctaw Tribe of Indians.

Comes now your petitioner, J. F. Riley et al., and for himself and all the persons hereinafter named and shows to your honor:

That he, together with all the other parties herein named (except

those shown to be intermarried persons) are the legal and lineal descendants of one Frances Riley, née Chambers, a full-blood Choctaw Indian woman and a recognized member of the Choctaw Tribe in the old Choctaw Nation in the State of Mississippi; that the said Frances Riley was the daughter of John Chambers and Nancy Chambers, née Fulson, both of whom were full-blood Choctaw Indians, and as such lived and died as members of the Choctaw Tribe in Mississippi, and whose names appear or should appear on the official rolls of said Choctaw Nation.

Your petitioner shows that the said Frances Riley was on the — day of —, — duly and lawfully married to Cornelius Riley, and that there was born as issue of said marriage the following named children, to-wit: Jane L. Hulitt, née Riley; Mary E. Broom, née Riley; M. D. Riley, J. F. Riley, and Millie A. Fountain, née Riley, and that all of said persons are living and have legal issue as hereinafter stated.

That the said Millie A. Fountain was on the — day of —, 18—, duly and lawfully married to James Hulitt, a white man, and that there were born as issue of said marriage the following named children: Albert C. Hulitt and Franklin Hulitt, both of whom are still living and have issue as hereinafter stated.

That the said Millie A. Fountain was on the — day of —, 18—, duly and lawfully married to J. A. Fountain, a white man, and that there was born as issue of said marriage, the following named children: Charles E. Fountain, Emma A. Harper, née Fountain; Pink R. Brunson, née Fountain, and Kate Fountain, all of whom, together with their issue, are still living.

That your petitioner, J. F. Riley, was duly and lawfully married on the 19th day of December, 1866, to Elizabeth Riley, his late wife, now deceased, a white woman, and that there was born as issue of said marriage, the following children, to-wit: J. M. Riley, J. F. Riley, Jr., Luella Rairchilds, née Riley; Cora Upchurch, née Riley; Eddie Riley, A. C. Riley, Josephus Riley, and John B. Riley, all of whom are living with issue as hereinafter set out.

That the said M. D. Riley was on the 11 day of Mch., 1869, duly and lawfully married to his present wife, Sarah E. Riley, a white woman, and that there was born as issue of said marriage, the following children, to-wit: E. W. Riley, Collis A. Riley, Mildna Q. Riley, Kate Riley, Nancy E. Riley, and Margaret L. Riley, all of whom are living and have issue as hereinafter set out.

That the said Albert C. Hulitt was on the 23rd day of —, 1880, duly and lawfully married to his present wife, a white woman, Mary C. Hulitt, and that there was born as issue of said marriage, the following children, to-wit: James E. Hulitt, age 16 years; Mary E. Hulitt, age 14 years; Allen F. Hulitt, age 11 years, all of whom are now living.

That the said Franklin Hulitt was on the 30th day of June, 1891, duly and lawfully married to his said wife, a white woman, Mollie Hulitt, and there was born as issue of said marriage, the following named children, to-wit: Frank C.

Hulitt, aged 5 years; Alice Hulitt, aged 2 years; Alex. Hulitt, aged 3 years, and Julia Hulitt, aged 1 year, all of whom are living.

That the said Pink Brunson, née Fountain, was on the 20 day of Jan., 1886, duly and lawfully married to W. L. Brunson, a white man, and that there was born as issue of said marriage, the following named children, to-wit: Kate E. Brunson, aged 12 years; Frank E. Brunson, aged 9 years; Earl C. H. Brunson, aged 6 years; Clara E. Brunson, aged 4 years; Laurence P. Brunson, aged 10 years; James C. Brunson, aged 8 years; George S. G. Brunson, aged 5 years; Daniel W. Brunson, aged 1 year, and Madimore Brunson, aged 1 month, all of whom are living.

That the said J. F. Riley, Jr., was on the — day of —, duly and lawfully married to — Riley, a white woman and his present wife, and that there was born as issue of said marriage, the following named children, to-wit: Franklin Riley, aged 7 years; Lucile Riley, aged 5 years, and Dalton Riley, aged 2 years, all of whom are living.

Your petitioner further shows that the person heretofore mentioned as Mary Broom, née Riley, his sister, and the daughter of the said common ancestor of all these applicants, Frances Riley, née Chambers, moved west to the present Choctaw Nation in the year of 18—, with her family, and remained there; that she made application as provided by law to be enrolled as a citizen of the Choctaw Nation as the descendant of the said Frances Riley, and a judgment was rendered in favor of her and all her family, thereby fully adjudicating and finally determining the status as Choctaw

300 Indians of all the descendants of the said Frances Riley, née Chambers, a copy of which said judgment is hereto attached, marked Exhibit "A" and made a part hereof, and that on the — day of —, 1899, the Commission to the Five Civilized Tribes did, while at Wister, Indian Territory, place her name and that of all her family on the final roll of the Choctaw Tribe of Indians in the Indian Territory.

Your petitioner further shows that all other persons named herein are bona fide residents of the State of Mississippi, where they were nearly all born and where they have lived the principal part of their lives, and where their common ancestors, Frances Riley, elected to remain as provided by the treaty between the United States and the Choctaw Nation of Indians, September 30, 1830.

Your petitioner further shows that during the time that the Commission to the Five Civilized Tribes was in the State of Mississippi making the recent roll of the Mississippi Choctaws that each head of family heretofore named, appeared in person at the place designated by the said Commission for the special purpose of having themselves and the names of their family placed upon said rolls and offered to make proof of their said ancestor's status as a Mississippi Choctaw and anything in addition thereto that was proper and legal for the satisfaction of said Commission, but that they were denied all privileges, their names refused and they were rejected without a hearing.

Your petitioner further shows, that as Choctaw Indians, as heretofore set out, he and all the applicants herein named as Indians

by blood, are Mississippi Choctaws, whose status was permanently declared and whose rights to share in all the benefits of the Choctaw Tribe, except annuities, was forever guaranteed under the fourteenth article of the treaty made, entered into, signed, approved and confirmed by and between the Government of the United States and the Choctaw Tribe of Indians on the 30th day of September, 1830, of which said treaty is in full force and binding effect.

Your petitioners further show that the notice given when the Commission to the Five Civilized Tribes came to Mississippi for the purpose of enrolling the Mississippi Choctaws, was the only notice that they have ever received to appear before any tribunal for the purpose of determining their status or enrolling their names as members of their said tribe, and that they and each of them have always been ready to comply with any law passed by the Congress of the United States and to obey and abide by any ruling made by the department in charge of Indian Affairs, for the purpose of preserving their rights to which their Indian blood and the law entitles them.

Wherefore, the premises considered, your petitioner prays that his name and that of each of the descendants of the said Frances Riley heretofore given, together with their respective husbands and wives heretofore mentioned and herein set out as such, be placed upon the rolls of the Mississippi Choctaws and that they and each of them be decreed all the rights and benefits to which their Indian blood and the laws and treaties entitle them.

J. F. RILEY.

J. F. Riley, being first duly sworn, upon oath, states: That he is the person mentioned in the foregoing petition; that he has read over the said petition and knows the contents thereof, and that he is personally acquainted with all the parties mentioned therein, and that the matters and things therein contained are true.

CHAS. KRAMER, J. P.

302 Subscribed and sworn to before me this 26th day of Dec., 1899.

CHAS. KRAMER,

[NOTARIAL SEAL.]

J. P., and *Ex-Officio* Notary Public.

303

PARTY "EXHIBIT B."

Before the Commissioner of Indian Affairs, Washington, D. C.

In the Matter of the Enrollment of E. W. Riley and His Family as Members of the Choctaw Tribe of Indians.

Comes now your petitioner, E. W. Riley, for himself and for all persons hereinafter named, and shows to your honor:

That he, together with all other persons named herein (except

those shown to be intermarried persons), are the legal and lineal descendants of one Frances Riley, nee Chambers, a full-blood Choctaw Indian woman, as set forth in the petition of J. F. Riley et al., to which this petition is attached and of which it is made a part.

Your petitioner further shows that on the 23d day of Feb., 1888, he was duly and lawfully married to his present wife Riley, a white woman, and there has been born as issue of said marriage, the following children: Franklin, Lucile, and Dalton Riley, aged, respectively, seven, five, and two years. That all of the said children are alive and that they, together with his said wife and your petitioner, are all bona fide residents of the State of Mississippi, where they were born and where their common ancestor, the said Frances Riley, elected to remain when the Choctaws were removed to the west.

Your petitioner further shows that he appeared before the Commission to the Five Civilized Tribes at Philadelphia, Neshoba County, Miss., one of the places designated by the said Commission for enrolling applicants during the time they were making their recent rolls of the Mississippi Choctaws in the State of Mississippi 304-309 for the purpose of having his name and those of his family enrolled as such, but that said Commission refused to hear him in his own or in their behalf, and also refused to hear him as a witness for the other descendants of the said Frances Riley, wherefore this petition to your honor.

Wherefore, the premises considered, your petitioner prays that his name and that of his said wife, Ettie Riley, and their three children, Franklin, Lucile, and Dalton Riley, aged, respectively, seven, five, and two years, be placed on the rolls of the Mississippi Choctaws as provided by law, and that they and each of them be decreed all the rights and benefits to which their Indian blood and the treaties and laws entitle them.

E. W. RILEY.

E. W. Riley, being first duly sworn, upon his oath, says: That he is the petitioner named in the above and foregoing petition: that he has read over the same, together with the petition of J. F. Riley herewith, and that the matters and things contained in each of the said petitions are true.

CHAS. KRAMER, J. P.

Subscribed and sworn to before me this 26th day of Dec., 1899.

CHAS. KRAMER,
[NOTARIAL SEAL.] J. P., and *Ex-Officio* Notary Public.

On June 1, 1908, the withdrawal of Robert L. Owen, Esq., as attorney was filed and motion made to substitute James K. Jones in his stead.

On September 8, 1908, a motion was made to substitute Wirt K.

Winton, adm'r. of Charles F. Winton, as claimant, was filed and the motion was allowed September 10, 1908.

On June 8, 1909, the defendants filed a traverse.

On June 24, 1909, the defendants filed a general traverse to the petition of Ralston & Siddons.

On November 11, 1910, Ralston, Siddons & Richardson filed their withdrawal as attorneys for M. M. Lindly, intervenor.

On January 28, 1911, Ralston, Siddons & Richardson were substituted as attorneys for James E. Arnold, intervenor.

On March 4, 1911, Ralston, Siddons & Richardson, attorneys, filed a motion to make the United States a party defendant, which motion was overruled by the Court in the opinion of the Chief Justice of May 29, 1916, which will appear later in this record.

On March 4, 1911, a petition for an order requiring the United States to retain possession of funds subject to the payment of the judgments in this case was filed, which motion was overruled March 31, 1911.

On February 17, 1912, a motion was filed to dismiss, which was argued May 20, 1912, and the motion was overruled December 2, 1912.

On January 18, 1913, a power of attorney from Robert L. Owen to W. W. Scott was filed.

311 IV. *General Traverse to the Petition and Intervening Petitions, Filed by Defendant July 11, 1913.*

In the Court of Claims of the United States.

No. 29,821.

THE ESTATE OF CHARLES F. WINTON, Deceased, et al.,

VS.

JACK AMOS et al., Known as Mississippi Choctaws.

And now come the defendants, by the Attorney General of the United States, and, answering the petition and intervening petitions of the claimants herein, denies each and every allegation therein contained and asks judgment that the said petition and intervening petitions be dismissed.

HUSTON THOMPSON,
Attorney General.

312 V. *History of Further Proceedings.*

The case was argued on October 14, 15, 16, 20, and 21, 1913, and submitted to the Court.

On December 7, 1914, the Court filed tentative findings of fact and per curiam opinion, and an order allowing forty days to all par-

ties in interest to file objections to findings and to file briefs, and allowed thirty days thereafter to defendants and all others to reply thereto. The case was set for hearing February 23, 1915.

On January 21, 1915, a power of attorney from Wirt K. Winton to W. W. Scott, esq., was filed.

On January 21, 1915, objections to the findings of fact filed December 7, 1915, or motions to amend same were filed by Est. of C. F. Winton, Robert L. Owen and other associates of Winton; Louis P. Hudson; Melville D. Shaw; John London; Walter S. Field and M. M. Lindly; James E. Arnold; T. B. Sullivan and Joseph H. Neill; John W. Toles; Est. of Chester Howe; James S. Bounds; William N. Vernon; and the defendants.

On January 27, 1915, the intervenors, Choctaw-Chickasaw Lands and Development Company, filed a motion for leave to file reply and objections to findings of December 7, 1914, which was ordered to the files to be considered when case comes up on merits.

On January 28, 1915, a motion was filed by Walter S. Field (intervenor) to substitute L. A. Pradt, esq., as his attorney in place of Webster Ballinger, esq., which was allowed by the Court February 5, 1915.

On February 5, 1915, Webster Ballinger, esq., withdrew as attorney for said Field.

313 On February 20, 1915, William W. Scott, filed a motion to amend the petition by making the United States a party defendant, which motion was overruled by the Court in the opinion of the Chief Justice of May 29, 1916, as appears later in this record.

The case was argued February 23, 24, 25, 26, 1915, and submitted to the Court.

On May 17, 1915, the Court filed findings of fact and conclusions of law dismissing the several petitions and intervening petitions, with an opinion by Booth, J.

On August 9, 1915, a motion for new trial, or rehearing, and motion to amend the findings of fact entered May 17, 1915, with brief, was filed by W. W. Scott, esq., attorney for estate of Winton.

On August 14 1915, exceptions to findings of fact and bill of exceptions on behalf of John London were filed by M. S. Farmer, esq.

On August 15, 1915, exceptions for Lindly & Field were filed by L. A. Pradt, esq.

On August 16, 1915, a motion for new trial for Katie A. Howe, et'x. was filed by W. W. Wright, esq.

On August 16, 1915, a motion for new trial for William N. Vernon was filed by W. W. Wright, esq.

On August 16, 1915, a bill of exceptions for Field and Lindly was filed by L. A. Pradt, esq.

On August 16, 1915, a motion for new trial for J. J. Beckham was filed by W. W. Wright, esq.

On October 5, 1915, the Court allowed the Government counsel until Nov. 15, 1915, to file reply brief to above motions.

314 On November 15, 1915, the defendants filed a brief on claimants and intervenors motion for a new trial and objec-

tions to claimants motion to amend the Court's findings of fact, and Field and Lindly's exceptions, and London's bill of exceptions.

Exceptions of intervenors Field & Lindly to findings of fact and conclusions of law to correct clerical error in former exceptions filed L. A. Pradt, esq.

On November 29, 1915, the intervenors Field and Lindly; James S. Bounds; and John London filed a motion to extend the December Term 1914.

On December 4, 1915, James E. Arnold, intervenor, filed a motion to amend findings of fact and for rehearing.

On December 6, 1915, claimant's motion for new trial were ordered to Law Calendar and set for hearing Tuesday, February 1, 1916, at which time all other motions in the case were ordered to be heard.

315 VI. *Argument and Submissions of Motions.*

On February 1, 1916, the argument on all motions was begun by Mr. W. W. Scott for the estate of Winton.

February 2, 1916, the argument was continued by Mr. W. W. Scott for the estate of Winton, and Mr. Guion Miller for the estate of Chester Howe, deceased.

February 3, 1916, Mr. Guion Miller continued his argument for the estate of Chester Howe, deceased; Mrs. M. S. Farmer, Jr., for John London; Mr. William E. Richardson for James E. Arnold et al.; and Mr. George M. Anderson for the defendants.

February 4, 1916, Mr. George M. Anderson continued his argument for defendants, and Mr. W. W. Scott for the estate of Winton, deceased.

February 5, 1916, the argument in the case was continued by Mr. Benjamin Carter for John Boyd; Mr. George M. Anderson for the defendants, and concluded by Mr. William W. Scott for the estate of Winton, and submitted.

316 VII. *Order of the Court on Motions of Claimants and Defendants, Entered May 29, 1916.*

Order.

It is ordered by the Court that the claimants' and defendants' motion to amend findings be and the same are hereby allowed in part and overruled in part.

The former findings are withdrawn and amended findings this day filed. The several petitions and intervening petitions are dismissed.

Opinion by Judge Booth; concurring opinion by Chief Justice Campbell.

BY THE COURT.

317 VIII. *Findings of Fact. Conclusion of Law. Opinion by Booth, J., and Concurring Opinion by Campbell, Ch. J.*

Filed May 29, 1916.

THE ESTATE OF CHARLES F. WINTON, Deceased, and Others,

VS.

JACK AMOS and Others, Known as the "Mississippi Choctaws."

This case having been heard by the Court of Claims, the court upon the evidence, makes the following

Findings of Fact.

I.

The jurisdictional act under which this suit is brought was approved on April 26, 1906 (34 Stat., 140), and provides:

"That the Court of Claims is hereby authorized and directed to hear, consider, and adjudicate the claims against the Mississippi Choctaws of the estate of Charles F. Winton, deceased, his associates and assigns, for services rendered and expenses incurred in the matter of the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation, and to render judgment thereon on the principle of quantum meruit in such amount or amounts as may appear equitable or justly due therefor, which judgment, if any, shall be paid from funds now or hereafter due such Choctaws by the United States. Notice of such suit shall be served on the governor of the Choctaw Nation, and the Attorney General shall appear and defend the said suit on behalf of said Choctaws."

II.

The jurisdictional act was amended by an act approved May 29, 1908 (35 Stat., 457), which provides:

"That the Court of Claims is hereby authorized and directed to hear, consider, and adjudicate the claims against the Mississippi Choctaws of William N. Vernon, J. S. Bounds, and Chester Howe, their associates or assigns, for services rendered and expenses incurred in the matter of the claims of the Mississippi Choctaws to citizenship in the Choctaw Nation, and to render judgment thereon on the principle of quantum meruit in such amount or amounts as may appear equitable and justly due therefor, which judgment, if any, shall be paid from funds now or hereafter due such Choctaws as individuals by the United States. The said William

318 N. Vernon, J. S. Bounds, and Chester Howe are hereby authorized to intervene in the suit instituted in said court under the provisions of section nine of the act of April twenty-sixth, nineteen hundred and six, in behalf of the estate of Charles W.

Winton, deceased: Provided, That the evidence of the interveners shall be immediately submitted: And provided further, That the lands allotted to the said Mississippi Choctaws are hereby declared subject to a lien to the extent of the claim of the said Winton and of the other plaintiffs authorized by Congress to sue the said defendants, subject to the final judgment of the Court of Claims in the said case. Notice of such suit or intervention shall be served on the governor of the Choctaw Nation, and the Attorney General shall appear and defend the said suit on behalf of the said Choctaws."

III.

The associates of Charles F. Winton, now deceased, are Robert L. Owen; James K. Jones, now deceased; Walter S. Logan, now deceased; Preston S. West; Frank B. Crosthwaite; and John Boyd.

Neither the said Jones, Logan, West, Crosthwaite or Boyd filed a petition herein, but the said John Boyd appeared by counsel. His association resulted from a contract with Charles F. Winton and Robert L. Owen, a copy of which appears in the appendix to these findings, page 54.

Later, and before the filing of the petition herein, James K. Jones became, by assignment, an associate of the said Charles F. Winton, deceased. At the time of his death and for many years prior thereto Charles F. Winton was a citizen of the State of Oklahoma. Robert L. Owen and Preston S. West are and have been for many years citizens of the State of Oklahoma. At the time of his death and for many years prior thereto Walter S. Logan was a citizen of the State of New York. Frank B. Crosthwaite and John Boyd are and have been for many years citizens of the District of Columbia.

IV.

The treaty of Dancing Rabbit Creek was entered into between the United States and the Choctaw Nation on September 27, 1830 (7 Stat., 333; Miss. Code, 1848, pp. 121-128), by article 3, of which the Choctaws ceded all of their lands east of the Mississippi River and agreed to remove west of that stream during the years 1831, 1832, and 1833.

Article 14 provided that—

"Each Choctaw head of a family being desirous to remain and become a citizen of the States should be permitted to do so by signifying his intention to the agent within six months from the ratification of this treaty, and he or she shall thereupon be entitled to a reservation of one section of 640 acres of land, to be bounded by sectional lines of survey; in like manner shall be entitled to one-half that quantity for each unmarried child which is living with him over 10 years of age; and a quarter section to such child as may be under 10 years of age, to adjoin the location of the parent. If they reside upon said lands intending to become citizens of the State for five years after the ratification of this treaty, in that case a grant in fee

simple shall issue; said reservation shall include the present
319 improvement of the head of the family or a portion of it.

Persons who claim under this article shall not lose the privilege of a Choctaw citizen, but if they ever remove they are not to be entitled to any portion of the Choctaw annuity."

By article 19 reservations of from two to four sections of land each were provided for a limited number of prominent members of the Choctaw Nation by name, and to each head of a family, not exceeding 1,600, a reservation proportionate in size to his improvements and the number of acres he had in cultivation. Captains of the tribe, not exceeding 90, were given one section of land each, and the orphans of the tribe one-half of a section each.

The mixed bloods who elected to remain in Mississippi were provided for under section 19 of the treaty, while the full bloods who remained and elected to become citizens of the State were provided for under article 14; hence the full-blood Mississippi Choctaws have always been called "Fourteenth Article Claimants."

V.

During the pendency of the negotiations between the United States and the Choctaw Nation for the "Dancing Rabbit Creek treaty" the Legislature of the State of Mississippi, where the Choctaws were living on January 19, 1830, passed an act abolishing tribal customs of Indians not recognized by the common law or the law of the State, making them citizens of the State, with the same rights, immunities, and privileges as free white persons; extending over them the laws of the State; validating tribal marriages; and abolishing the offices of chief, mingo, headman, or other post of power established by tribal statutes, ordinances, or customs under penalty of \$1,000 fine and imprisonment not exceeding 12 months. (Miss. Rev. Stats., 1840; Code of Miss., 1848.)

The act of the legislature of January 19, 1830, was ratified by the constitution of 1832 (art. 7, sec. 18), and reenacted in the general laws of 1840 and the code of 1848.

The constitution of Mississippi of 1868, however, abolished all distinctions of race, color, or previous status of its inhabitants. By Section 2 of article 1, it declared that "all persons resident in this State, citizens of the United States, are hereby declared citizens of the State of Mississippi"; and by section 2 of the same article it declared that "no person shall be deprived of life, liberty, or property except by due process of law."

The Mississippi Choctaws who removed to the Choctaw Nation were at that time citizens of the United States. They became citizens of Indian Territory by virtue of section 6 of the act of February 8, 1887 (24 Stats., 390), which act was amended by the act of March 3, 1901 (31 Stats., 1447), declaring every Indian in Indian Territory to be a citizen of the United States.

After the Indian Territory was admitted on November 16, 1907, into the Union as a part of the State of Oklahoma the Mississippi Choctaws became, in common with other Indians residing in the

State, citizens thereof, with all the rights, privileges, immunities, and franchises of such citizens. (Sec. 1, art. 3, constitution of Oklahoma.)

320 The enabling act of June 6, 1906 (34 Stats., 267), providing for the admission of Oklahoma into the Union, contained certain reservations by the Government relative to Indians and their property.

On April 26, 1906, Congress extended certain restrictions upon the power of alienation and encumbrance by full-blood Choctaws in Oklahoma. (34 Stats., 144.)

VI.

The Choctaws who remained in Mississippi under article 14 of the treaty of 1830 adopted the dress, habits, customs, and manner of life of the white citizens of that State. They had no tribal or band organization or laws of their own, but were subject to the laws of the State of Mississippi, and no funds were ever appropriated by the Government for their support, though a great deal of land was given to those who remained. Said Choctaws did not live upon any reservation, nor did the Government exercise any supervision or control over them. Neither the Indian Office nor the Department of the Interior assumed or exercised any jurisdiction over them, and never recognized them either individually or as bands, but regarded them as citizens of the State of Mississippi, and the department held that it had no authority to approve any contracts made with them.

VII.

On December 24, 1889, the Choctaw Nation, through its national legislature, memor-alized Congress to provide for the removal of large numbers of Choctaws in the State of Mississippi and Louisiana who were entitled to all of the rights and privileges of citizens in the Choctaw Nation, and to make provision for the emigration of said Choctaws from said State to the Choctaw Nation. In 1891 a commission was provided for and funds appropriated by the Choctaw Council for the removal and subsistence of Mississippi Choctaws to the Choctaw Nation, and during the same year 181 were removed and admitted to citizenship in the nation.

VIII.

By the act of March 3, 1893 (27 Stat., 645), Congress created the Commission to the Five Civilized Tribes, familiarly known as the "Dawes Commission," for the purpose of procuring, through negotiation, the extinguishment of the national or tribal title to the lands of the Five Civilized Tribes living in the Indian Territory and their cession to the United States for allotment in severalty among the members thereof.

By the act of June 10, 1896 (29 Stat., 321), Congress directed the Dawes Commission to make a roll of the Five Civilized Tribes,

and provided that applicants for enrollment should file their applications with the commission within three months from the passage of the act, with right of appeal to the United States courts.

IX.

Thereafter, on June 23, 1896, Robert L. Owen entered into an agreement with Charles F. Winton to proceed to Mississippi and secure contracts with such Indians there resident as might be entitled to participate in any distribution of the lands or
321 moneys of the Choctaw or Chickasaw Nations, Winton binding himself to secure the evidence, powers of attorney, and contracts as prescribed by said Robert L. Owen, said Owen to provide the funds and Winton to receive one-half of the net proceeds of the contracts. This agreement was modified July 23, 1896, by a second contract between the same parties, in which it was provided that Winton should act as attorney in Mississippi Choctaw cases under his agreement with Owen; that said Owen should have a one-half interest in all of said contracts; and in the event of accident to Winton, that Owen should have full authority to take up all Mississippi cases in place of Winton.

X.

Immediately thereafter Winton proceeded to Mississippi, and during the year 1896 and the years following procured approximately 1,000 contracts with full-blood Mississippi Choctaws, some of said contracts being taken in the name of said Winton and some in the name of said Owen. Under the terms of these contracts said Winton and Owen agreed to use their best efforts to secure the rights of citizenship for said Mississippi Choctaws, as members of the Choctaw Nation, in the lands and funds of said tribes, for a fee of one-half of the net interest of each allottee in any allotment thereafter secured. These contracts were subsequently abandoned by said Owen and Winton, because void and nonenforceable under the acts of June 28, 1898, and May 31, 1900, as is hereinafter more fully stated.

Thereafter new contracts were taken principally in the name of Charles S. Daley, an attorney at law of New York City, to the number of several hundred.

Sample copies of all contracts are set forth in an appendix to these findings.

XI.

At the time of the making of these said contracts by Winton and Owen the Mississippi Choctaws, full blood, were extremely poor, living in insanitary conditions and working at manual labor for daily wages. Their children could not attend schools provided for the whites, and they were denied all social and political privileges.

Early in 1897 said Owen spoke to Hon. John Sharp Williams, then a Representative in Congress from the fifth congressional district of Mississippi, wherein practically all full-blood Choctaws in

Mississippi then resided, with reference to the possible rights of Mississippi Choctaws to participate in the partition of the lands of the Choctaw Nation in Oklahoma, at that time also submitting to Mr. Williams a copy of the Dancing Rabbit Creek treaty and calling his attention to article 14 thereof. This was the first time that said matter had been called to the attention of Mr. Williams.

Thereafter and until March 4, 1903, when he ceased to represent the fifth district of Mississippi in the House of Representatives, Mr. Williams suggested or prepared, in conjunction with Senator Walthall in the Senate and Representative Curtis in the House (the latter being chairman of the Committee on Indian Affairs), all the legislation passed in Congress for the benefit of the Mississippi Choctaws.

322 Thereupon, on February 11, 1896, Mr. Williams wrote a letter to the Commissioner of Indian Affairs, stating that a great many Choctaws were living in his district, and made inquiry as to whether they would come in for anything under an act then pending to divide the Choctaw lands in severalty. On November 10, 1896, Mr. Williams wrote another letter to the commissioner asking information as to the rights of Choctaws who had remained in Mississippi after the tribe had removed, stating that he had no information on the subject himself, and the Commissioner of Indian Affairs referred him to the Commissioner of the Five Civilized Tribes.

Thereafter and until March 3, 1903, when his county was placed in another congressional district, Representative Williams was consulted by the chairman, or member in charge of pending bills, upon all legislation concerning the Mississippi Choctaws.

XII.

In December, 1896, Charles F. Winton presented a memorial to Congress on behalf of Mississippi Choctaws, asking that they be enrolled and permitted to share the privileges of Choctaw citizenship in the Choctaw Nation. Again, in January, 1897, a second memorial on behalf of Mississippi Choctaws was presented through Winton, seeking to accomplish the same purpose.

In September, 1897, the said Winton presented a third memorial of the same purport to the Secretary of the Interior.

In the said memorial on behalf of the Mississippi Choctaws it was, among other things, insisted that the Mississippi Choctaws for a valuable consideration had bought and paid for two things to be enjoyed jointly and coincidentally, namely, the right of residence in Mississippi, with the further right of not losing the right of a Choctaw citizen by such residence in Mississippi, and that such residence should never be construed as depriving them of such right thus established by said treaty, and that such right could not be taken from them without their consent, said memorials of December, 1896, and January, 1897, being set out on pages 55 to 59 of the appendix hereto.

XIII.

Prior to the presentation of the memorial first above named, said Owen, in September or October, 1896, appeared before the Commission to the Five Civilized Tribes in behalf of the defendant, Jack Amos, and 97 other full-blood Choctaws residing in Mississippi, and attempted to secure their enrollment under the act of June 10, 1896, which authorized said commission to enroll Indians residing in the Indian Territory who filed their applications within three months from the date of the passage of that act, with right of appeal to the United States District Courts of the Territory. The commission refused to enroll said Amos and said other Choctaws on the ground that they were not resident in the Indian Territory; whereupon an appeal was taken by said Owen to the United States Court for the Central District of Indian Territory, where the ruling of the commission was subsequently affirmed.

This latter decision was later indirectly affirmed by the Supreme Court on May 15, 1899, in the case of *Stephens v. The Cherokee Nation* (174 U. S., 445), which held the legislation
323 under which the judgment was rendered constitutional and that the court was without jurisdiction to review the decisions of the courts of Indian Territory in refusing to enroll applicants for citizenship in the Five Civilized Tribes.

The litigation of the Amos case before the Dawes Commission and the Territorial court was instituted and maintained by said Winton and associates, and a brief was filed by them in behalf of the Mississippi Choctaws under the title of *Emma Nabors et al. v. The Choctaw Nation* before the Supreme Court of the United States.

XIV.

At the same time the opinion was rendered in the case of *Jack Amos et al. v. The Choctaw Nation*, as stated in the foregoing finding, the same Territorial court delivered an opinion in the case of *E. J. Horne v. The Choctaw Nation*. In the latter case the claimant was a Mississippi Choctaw who, prior to the date of his application to be enrolled, had removed to the Choctaw Nation. It was held that the claimant was entitled to be enrolled by reason of the provisions of article 14 of the treaty of 1830, regardless of his degree of Indian blood, having proved his descent from an ancestor who had complied with the provisions of the treaty. Incidentally it was also held that the act of the Choctaw Council of November 5, 1886, restricting the qualifications for Choctaw citizenship, was invalid because in conflict with the provisions of the treaty conferring the right.

XV.

On February 11, 1897, a resolution, which had been drawn by said Owen, was passed by the Senate directing the Secretary of the Interior to transmit the following information:

"First. A copy of the memorial of the Choctaw Nation of December 24, 1889, relative to the Mississippi Choctaws.

"Second. Deposition of Greenwood Leflore, ex-chief of the Choctaw Nation, of February 24, 1843, before United States Commissioners Clayborne and Graves, relative to importance of the fourteenth article of the treaty of 1830.

"Third. Whether or not the Choctaws entitled to remain in Mississippi by the fourteenth article were reported by United States Commissioners Murray and Vroom to the President of the United States on July 31, 1838, as having been in a great number of cases forced to remove from the reservations granted them by the fourteenth article.

"Fourth. Whether or not the Mississippi Choctaws were parties to any subsequent Choctaw treaty or have ever executed a relinquishment of their rights of Choctaw citizenship."

The Commissioner of Indian Affairs, in his reply to this resolution, February 15, 1897, transmitted, through the Secretary of the Interior, a copy of the memorial of the Choctaw Nation of December 24, 1889, to Congress; a copy of the deposition of Greenwood Leflore, taken on February 24, 1843, before United States Commissioners Clayborne and Graves; and an extract from the report of United

States Commissioners Murray and Vroom to the President, 324 dated July 31, 1838, stating that the last two papers called for were copied from the printed record of the Court of Claims in case No. 12742, entitled the Choctaw Nation v. The United States. The Commissioner answered the last inquiry of the resolution by stating that he had not found any provision in the Choctaw treaties of 1837, 1854, 1855, or 1866, by which the Choctaws in Mississippi had relinquished any rights of Choctaw citizenship that they may have acquired under the fourteenth article of the treaty of 1830 or otherwise.

During the consideration by the Committee on Indian Affairs of the House of House bill 10372 said Owen made an argument before the committee. A favorable report was made by the committee upon said bill. The bill never passed either House of Congress.

XVI.

The Indian appropriation act of June 7, 1897, contained the following item:

"That the commission appointed to negotiate with the Five Civilized Tribes in the Indian Territory shall examine and report to Congress whether the Mississippi Choctaws under their treaties are not entitled to all the rights of Choctaw citizenship, except interest in the Choctaw annuities."

The above provision (30 Stats., 83) was inserted in the bill in the Senate as a substitute offered by Senator Pettigrew to an amendment which had been offered by Senator Walthall.

XVII.

Following the passage of said act last named said Owen appeared before the Dawes Commission in the interest of the Mississippi Choctaws, with whom he had contracts.

On January 28, 1898, said commission made a report to Congress, as required by the act of June 7, 1897 (Rept. of Com., 1898, p. 15), in which, after referring to the decision of the commission requiring removal by Mississippi Choctaws before they could acquire rights to allotments of Choctaw lands, and the affirmance of its decision by the citizenship court in the Jack Amos case, it was said:

"If, in accordance with this conclusion of the commission, these Mississippi Choctaws have the right at any time to remove to the Indian Territory and, joining their brethren there, claim participation in all the privileges of a Choctaw citizen, save participation in their annuities; still, if any person presents himself, claiming this right, he must be required by some tribunal to prove the fact that he is a descendant of some one of those Indians who originally availed themselves of and conformed to the requirements of the fourteenth article of the treaty of 1830. The time for making application to this commission to be enrolled as a Choctaw citizen has expired. It would be necessary, therefore, to extend by law the time for persons claiming this right to make application and be heard by this commission or to create a new tribunal for that purpose."

The commission concluded by recommending that the question should be referred by Congress to the Court of Claims.

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XVIII.

On June 28, 1898, Congress passed an act commonly known as the "Curtis Act," section 21 of which provided for the making of the rolls of the Five Civilized Tribes by the Dawes Commission, and further provided, among other things, that—

"Said commission shall have authority to determine the identity of Choctaw Indians claiming rights in the Choctaw lands under article fourteen of the treaty between the United States and the Choctaw Nation concluded September twenty-seventh, eighteen hundred and thirty, and to that end may administer oaths, examine witnesses, and perform all other acts necessary thereto and make report to the Secretary of the Interior.

* * * * *

"No persons shall be enrolled who has not heretofore removed to and in good faith settled in the nation in which he claims citizenship: Provided, however, That nothing contained in this act shall be so construed as to militate against any rights or privileges which the Mississippi Choctaws may have under the laws of or treaties with the United States."

The foregoing proviso was prepared by Mr. Williams, who presented it to Mr. Curtis, then in charge of the bill, who offered it as an amendment to the same.

XIX.

Under date of July 1, 1898, said Owen prepared a general circular for Winton addressed to the Mississippi Choctaws, notifying them of the requirements of the Curtis Act relative to Mississippi Choctaws and advising said Choctaws of the manner in which they must be identified, said circular being in the following words and figures, to wit:

NEWKIRK, O. T., July 1, 1898.

To the Mississippi Choctaws:

For your information I enclose report No. 3080, H. R., 54th Congress, 2d session. The Indian Committee of House of Representatives decided favorably to the Mississippi Choctaws under date of March 3, 1897. This report was obtained for you by active labor, first hunting up the facts and then getting Senator Wallthal to pass a resolution through the Senate to get the information (Sen. Doc. 129, 54th Cong., 2d sess.), and then soliciting Mr. Allen, of Mississippi, to prepare it. By the help of Mr. Williams and Senator Wallthal and Mr. Allen the following item was put in the Indian appropriation act of June 7, 1897:

"That the commission appointed to negotiate with the Five Civilized Tribes in the Indian Territory shall examine and report to Congress whether the Mississippi Choctaws, under their treaties, are not entitled to all the rights of Choctaw citizenship, except an interest in the Choctaw annuities."

This commission, January 28, 1898, submitted their report, copy herewith (H. R. Doc. 274, 55th Cong., 2d sess.), deciding that the Mississippi Choctaws "to avail himself of the 'privileges of a Choctaw citizen,' must prove himself a descendant of a fourteenth-article claimant, and in good faith join the Choctaws west with the intent to become one of the citizens of the nation."

326 In bill H. R. 8581 it was provided, June, 1898, that—

"Said commission shall have authority to determine the identity of Choctaw Indians claiming rights in the Choctaw lands under article fourteen of the treaty between the United States and the Choctaw Nation, concluded September twenty-seventh, 1830, and to that end they may administer oaths, examine witnesses, and perform all other acts necessary thereto, and report to the Secretary of the Interior."

It provides further that—

"No person shall be enrolled who has not heretofore removed to and in good faith settled in the nation in which he claims citizenship: Provided, however, That nothing contained in this act shall be so construed as to militate against any rights or privileges which the Mississippi Choctaws may have under the laws of or the treaties with the United States."

Not only the Dawes Commission found that the Mississippi Choctaws would have to move to Indian Territory and establish residence in good faith there, but the United States court, Judge Clayton presiding, July 1, 1897, found that only those Choctaws who had previ-

ous to July 1, 1897, settled in good faith in the Choctaw Nation were entitled to citizenship.

By special authority of an item in the Indian appropriation bill allowing an appeal from this decision, I shall on your behalf make an appeal to the Supreme Court of the United States to test the question of your rights.

In making up the roll of Mississippi Choctaws it is of the highest importance to furnish proof that each claimant is a descendant of a fourteenth-article claimant. For this reason I have secured the list of such claimants, and will make it available to my clients as soon as practicable.

The Dawes Commission will probably take evidence this fall and enroll all who are truly entitled.

Yours, very respectfully,

C. F. WINTON,
Newkirk, O. T.

December 2, 1898, the Dawes Commission, by printed circular notice and handbills, sent through the mails and posted in conspicuous places throughout the neighborhood in which the Choctaws in Mississippi resided, officially notified them of the time and places at which the commission would hear applications for identification under the Curtis Act, and explained in detail the steps necessary to procure identification thereunder, as per the following circular:

Notice.

To Mississippi Choctaw Indians:

The Dawes Commission has thought it necessary and proper to give definite information of the manner in which it will perform the duty of identifying Mississippi Choctaws, imposed upon it by the following provision of section 21, of the act of Congress, June 28, 1898:

"Said commission shall have authority to determine the identity of Choctaw Indians claiming rights in Choctaw lands under article 14 of the treaty between the United States and the Choctaw Nation, concluded September 27, 1830, and to that end they may
327 administer oaths, examine witnesses, and perform all other acts necessary thereto and make report to the Secretary of the Interior."

Section 14 of the treaty above referred to is as follows:

"Article XIV. Each Choctaw head of a family being desirous to remain and become a citizen of the States shall be permitted to do so, by signifying his intention to the agent, within six months from the ratification of this treaty, and he or she shall thereupon be entitled to a reservation of one section of six hundred and forty acres of land, to be bounded by sectional lines of survey; in like manner shall be entitled to one-half that quantity for each unmarried child which is living with him over ten years of age, and a quarter section to each child as may be under ten years of age, to adjoin the location of the parent. If they reside upon said lands intending to become citizens

of the States for five years after the ratification of this treaty, in that case a grant in fee simple shall issue. Said reservation shall include the present improvement of the head of the family or a portion of it. Person who claim under this article shall not lose the privilege of a Choctaw citizen, but if they ever remove are not entitled to any portion of the Choctaw annuity."

It will be observed that the benefits extended under this article of the treaty are limited to Choctaw heads of families, who, within six months from the ratification of the treaty (Feb. 24, 1831), signified their intention to remain and become citizens of the States, together with their children therein mentioned. Proof showing a compliance with these provisions by applicants or their ancestors will be required in every case, and exhibits of records and documents, properly verified, showing these facts, will be received. No written pleadings, depositions, or affidavits, in any case, will be received or filed by the commission; but applicants or the head of each family desiring to be identified under said section of the treaty will be required to appear in person before the commission at one of its appointments for oral examination under oath, from which, and the documentary evidence above named, the commission will determine the identity of the applicants; and no further expense to applicant is necessary than to so appear before the commission with documentary evidence aforesaid. All expenses of the commission and of its work are paid by the Government, and no charge will be made against any person appearing before it.

The commission, in performing this duty, will not be accompanied or attended by anyone, outside of its own clerical assistants, in any degree authorized to speak for or act with it.

The commission is not authorized to enroll Mississippi Choctaws as Choctaw citizens. Its duty is to identify them as persons who come within the provisions of said article 14, and to make report thereof to the Secretary of the Interior, and Congress will doubtless make provisions for the rights of such persons to be determined by the courts. If such determination be in their favor they will then be enrolled and entitled to participate in the allotment of Choctaw lands.

TAMS BIXBY,

A. S. McKENNON,

T. B. NEEDLES,

Members of Commission.

Muscogee, Indian Territory, December 2, 1898.

Thereafter, in January, 1899, the Dawes Commission, through one of the commissioners, A. S. McKennon, proceeded to Mississippi, with several clerks and stenographers, and there identified and made up a schedule of 1,923 persons as being Mississippi Choctaws entitled to citizenship in the Choctaw Nation under the fourteenth article of said treaty. There were, according to the estimate of the commission, not more than 2,500 descendants of Choctaws who remained under

article 14 of the treaty of September 27, 1830, then living in Mississippi. The principle adopted in making this schedule was that proof of the fact that a claimant was a full-blood Indian, whose ancestors were living in Mississippi at the date of the treaty, was sufficient evidence to report his name as a Mississippi Choctaw under section 21 of the Curtis Act. This schedule, thereafter commonly known as the "McKennon roll," was subsequently approved by said commission, who forwarded the same with a report, dated March 10, 1899, to the Secretary of the Interior. Said schedule was never approved by the Secretary and was attempted to be withdrawn by the commission December 20, 1900, a duplicate copy of which having been retained in the Indian Office, and the same was formally disapproved by the Secretary March 1, 1907.

The work of Commissioner McKennon, covering a period of about three weeks, in identifying and making up said schedule, was interfered with and retarded by said Charles F. Winton, who endeavored to prevent the Indians from appearing for identification.

In the report of the Dawes Commission, dated March 10, 1899, to the Secretary of the Interior, transmitting said schedule prepared by Commissioner McKennon, it was said:

"The commission feels it a duty to report that contracts have been secured by white persons with almost every family for one-half of the lands and moneys which may be obtained by them, upon representation that their services are necessary to them in securing their rights. Such contracts are easily secured from these people, many of whom are so ignorant as to be able only with difficulty to give the names of the members of their families. Persons securing such contracts have done nothing whatever and can do nothing toward securing to these people any benefits accruing to them under the article of the treaty in question. Hon. John S. Williams, Member of Congress, in whose district in the State of Mississippi these Indians in most part reside, with the aid of the late Senator Walthall, has secured the legislation under which the commission is now acting, and their Congressman may be safely trusted to further look after their interests."

Charles F. Winton and one G. P. M. Turner, the latter then in the employ of James E. Arnold, one of the intervenors herein, were two of the white persons referred to in said report. Said Turner had previously sent out advertisements, in which he falsely represented himself as being connected with said commission.

Robert L. Owen furnished to Commissioner McKennon a list of 16,000 Choctaw Indians which aided said McKennon in his official work. The list so furnished by Owen was prepared by him in 1889 in connection with his employment as an attorney at law in the case of the Choctaw Nation v. The United States, and was used as a part of the court record in the trial of said case.

Shortly after transmitting the McKennon roll to the Secretary of the Interior as aforesaid, the Dawes Commission discovered that said

roll was very inaccurate, containing many names that should have been omitted and omitting the names of many Indians who should have been identified. Because of these facts another party was organized and sent out by the Dawes Commission for the purpose of making a more accurate and complete roll of the Mississippi Choctaws under the act of 1898. Hearings were commenced at Hattiesburg, Miss., in December, 1900, and were resumed at Meridian, Miss., April 1, 1901, from which time continuous sessions were held at Meridian and other places in Mississippi until the latter part of August of that year.

XXII.

February 7, 1900, said Winton and associates presented a memorial to Congress, praying that the treaty rights of the Mississippi Choctaws be so construed as to afford them the rights of Choctaw citizens without removal, or that they be permitted to have those rights determined in the courts. No action was taken by Congress upon this request.

XXIII.

April 4, 1900, said Winton and his associates memorialized Congress, requesting the following amendment to the Indian appropriation act then pending:

"Provided, That any Mississippi Choctaw duly identified and enrolled as such by the United States Commission to the Five Civilized Tribes shall have the right, at any time prior to the approval of the final rolls of the Mississippi Choctaws by the Secretary of the Interior, to make settlement within the Choctaw-Chickasaw country, and on proof of the fact of bona fide settlement they shall be enrolled by the Secretary of the Interior as Choctaws entitled to allotment."

The Indian appropriation act of May 31, 1900, contains the following proviso:

"Provided, That any Mississippi Choctaw duly identified as such by the United States Commission to the Five Civilized Tribes shall have the right, at any time prior to the approval of the final rolls of the Choctaws and Chickasaws by the Secretary of the Interior, to make settlement within the Choctaw and Chickasaw country, and on proof of the fact of bona fide settlement may be enrolled by such United States commission and by the Secretary of the Interior as Choctaws entitled to allotment.

"Provided further, That all contracts or agreements looking to the sale or encumbrance in any way of the lands to be allotted to said Mississippi Choctaws shall be null and void."

The last proviso was prepared by Mr. Williams and its passage secured by him, with assistance and cooperation of Senator Platt, they having been informed that a number of lawyers and other persons were securing contracts with the Mississippi Choctaws looking to the payment to them of certain shares of the prospective allotments to the Indians.

XXIV.

The Dawes Commission construed the provisions of the act of May 31, 1900, as prospective in its operation, and thereafter required from all applicants for enrollment proof of ancestry from Choctaw Indians who remained in Mississippi and received patents for lands under the fourteenth article of the treaty of 1830. This construction constituted a reversal of the principle previously adopted by the commission in making the so-called "McKennon roll," to wit: A presumption that the ancestors of full-blood Choctaws residing in Mississippi had fully complied with the technical requirements of article 14 of said treaty. It resulted that only six or seven persons claiming as Mississippi Choctaws were enrolled under the act of May 31, 1900, although there were from 6,000 to 8,000 applications filed in 1900 and the early part of 1901.

The Secretary of the Interior on August 26, 1899, directed the Dawes Commission to follow the full-blood rule of evidence recommended in the report of said commission dated March 10, 1899, in the identification of Mississippi Choctaws, and again on October 19, 1900, directed the said commission to follow that rule of evidence.

XXV.

June 13, 1900, the Choctaw Cotton Co. was organized and incorporated under the laws of West Virginia by said Winton and Owen, for the purpose of financing the removal of individual Mississippi Choctaws to the Indian Territory and there acquiring locations for them. Two-thirds of the capital stock of said company was issued to said Owen and one-third to said Winton. Subsequently all contracts theretofore taken by said Winton and his associates with individual Mississippi Choctaws were assigned to said Choctaw Cotton Co.

The said Choctaw Cotton Co. was, on the 7th day of August, 1911, dissolved and its charter annulled and surrendered by decree of the circuit court of Kanawha County, West Virginia, and such of the stock as was retained in the name of Owen and Winton has been filed in this court.

XXVI.

February 7, 1901, an agreement was made between the Dawes Commission and representatives on behalf of the Choctaw and Chickasaw Nations in the Indian Territory, which provided for the making up of the final rolls of all citizens and freedmen of the two nations upon which allotments of land and distribution of tribal property should be made. Section 13 of said agreement provided:

"13. All persons heretofore identified by the Commission to the Five Civilized Tribes as Mississippi Choctaws, and whose names appear upon the schedule dated March 10, 1899, prepared by said commission, under the act of Congress approved June 28, 1898 (30 Stat. L., 495), and such full-blood Choctaw Indians residing in the State of Mississippi, and such full-blood Choctaw Indians as may have removed from the State of Mississippi to the Indian Territory,

as may be identified by said commission, shall alone constitute the 'Mississippi Choctaws,' entitled to benefits under this agreement."

This section, among others, was subsequently amended as a result of a conference between representatives of the Interior Department, the Dawes Commission, and the two tribes, which 331 was held for the purpose of perfecting the agreement as negotiated and avoiding delay in its ratification. Section 13 as amended reads as follows:

"13. All persons duly identified as Mississippi Choctaws by the Commission to the Five Civilized Tribes under the act of Congress approved June 28, 1898, the act of Congress approved May 31, 1900, may at any time prior to September 1, 1901, make bona fide settlement within the Choctaw-Chickasaw country, and on proof of such settlement to such commission, on or before December 31, 1901, may be enrolled by such commission as Mississippi Choctaws entitled to allotment, which enrollment shall be final when approved by the Secretary of the Interior."

The effect of this amendment was to strike out the recognition of the schedule contained in the so-called "McKennon roll" of March 10, 1899, which had not been officially approved and which roll the Dawes Commission had requested permission to withdraw, and also to eliminate the full-blood rule of evidence relating to Mississippi Choctaws, and to provide in lieu thereof for the identification of Mississippi Choctaws in accordance with the acts of Congress enumerated in the section as amended and for the enrollment of Mississippi Choctaws, conditioned upon their removal in the manner and within the time as therein specified. The agreement as thus amended was transmitted on February 23, 1901, to the House of Representatives by the Secretary of the Interior, with his recommendation for its ratification. Said agreement was not ratified, however, prior to the adjournment of Congress on the ensuing 4th of March.

XXVII.

April 1, 1901, the second party, referred to in Finding XXI, sent to Mississippi by the Dawes Commission for the purpose of making a complete and accurate roll of Mississippi Choctaws, resumed hearings at Meridian, Miss., and held continuous sessions there and at other places in Mississippi until the latter part of August, 1901. During these hearings and the making of this roll the conduct of said Winton and his associates and that of James B. Arnold and Louis P. Hudson increased the work of enrollment and impeded its progress. Being advised by said Owen, and believing that the roll made by Commissioner McKennon in 1899, referred to in Finding XX, was a finality and constituted a favorable judgment in behalf of the individual Mississippi Choctaws whose names appeared thereon, Winton and his associates advised all Indians who had previously been enrolled not to appear again before the commission for identification.

XXVIII.

June 20, 1901, said Winton, acting under advice of counsel, began taking new contracts and with individual Choctaws living in Mississippi in lieu of all previous contracts theretofore taken by him and his associates, as described in Finding X. These latter contracts in place of stipulating for one-half of the prospective allotments of said Indians provided for the payment of a sum of money equal to one-half of the value of the net recovery of or for said Indians in land, money, or money values, and, unlike said first-named contracts, further provided for the removal of said Mississippi Choctaws from their places of residence to the Choctaw Nation in the Indian Territory. Said latter contracts were taken in a series numbered 1 to 834, beginning with the contract of the defendant, Jack Amos, and embraced about 2,000 persons. Said last-named contracts were also subsequently assigned to said Choctaw Cotton Co.

XXIX.

March 21, 1902, while preparation of the identification roll of Mississippi Choctaws was still in progress, an agreement was entered into between the Choctaw and Chickasaw Nations and the Dawes Commission, in which, by sections 41, 42, 43, and 44, it was proposed to fix the status of the Mississippi Choctaws. This agreement, after some amendments in Congress, was approved by act of Congress July 1, 1902, and ratified by the Choctaws and Chickasaws on September 25, 1902. (32 Stat., 641.) It was under this agreement, known as the "Choctaw-Chickasaw supplemental agreement," that practically all of the Mississippi Choctaws were enrolled and secured their right to allotments of Choctaw tribal lands. Section 41 of said agreement as originally signed by the Dawes Commission and representatives of the two nations reads as follows:

"41. All persons duly identified by the Commission to the Five Civilized Tribes under the provisions of section 21 of the act of Congress approved June 28, 1898 (30 Stats., 495), as Mississippi Choctaws entitled to benefits under article 14 of the treaty between the United States and the Choctaw Nation, concluded September 27, 1830, may, at any time within six months after the date of the final ratification of this agreement, make bona fide settlement within the Choctaw-Chickasaw country, and upon proof of such settlement to such commission within one year after the date of the final ratification of this agreement may be enrolled by such commission as Mississippi Choctaws entitled to allotment as herein provided for citizens of the tribes, subject to the special provisions herein provided as to Mississippi Choctaws, and said enrollment shall be final when approved by the Secretary of the Interior. The application of no person for identification as a Mississippi Choctaw shall be received by said commission after the date of the final ratification of this agreement."

April 24, 1902, a memorial by Winton and his associates was presented in the Senate in behalf of the full-blood Mississippi Choctaws,

which reviewed the prior legislation and prayed that the provisions of the supplemental agreement then pending should be amended so that the full-blood rule of evidence should be established and the Mississippi Choctaws be given time after identification to remove to the Choctaw country and longer time within which to make application. In this memorial it was stated:

"The unjust provisions and technical rules contained in sections 41, 42, 43, and 44 of the pending agreement were no doubt prepared by the attorneys representing the Choctaw and Chickasaw Nations with a view to barring out the pretenders who have attempted to secure enrollment in said nations by fraud. We do not blame but, on the other hand, commend all efforts of such attorneys to accomplish such a purpose; but we call attention to the fact that while attempting to accomplish this purpose the wording of the provisions is such that they unfortunately do a great injustice to a large number of full-blood Mississippi Choctaws who have already been identified, as stated above, and who are entitled to enrollment."

The said memorial prayed that sections 41, 42, 43 and 44, which it was alleged imposed onerous conditions upon Mississippi Choctaws, should be struck out and a plain provision made as follows:

"41. All persons heretofore identified by the Commission to the Five Civilized Tribes as Mississippi Choctaws, and whose names appear upon the schedule dated March 10, 1899, prepared by said commission under the provisions of the act of Congress approved June 28, 1898 (30 Stat. L., 495), and such full-blood Mississippi Choctaw Indians as may be identified by said commission, and the wives, children, and grandchildren of all such full-blood Choctaws, shall alone constitute the 'Mississippi Choctaws' entitled to benefits under this agreement.

"42. All 'Mississippi Choctaws,' as herein defined, who shall remove or may have removed to the lands of the Choctaw and Chickasaw tribes within twelve months after official notification of their identification shall be enrolled by said commission upon a separate roll designated 'Mississippi Choctaws'; and lands equal in value to lands allotted to citizens of the Choctaw and Chickasaw tribes shall in like manner be selected and set apart for each of them. All such persons who reside upon the lands of the Choctaw and Chickasaw tribes for a period of one year after enrollment as above provided shall, upon proof of such bona fide residence, receive patents as provided in the Atoka agreement, and they shall hold the lands thus allotted to them as provided in the Atoka agreement for citizens of the Choctaw and Chickasaw tribes, and be treated in all respects as other Choctaws."

Senator Harris, at the request of said Owen, introduced an amendment embodying the foregoing statements from the memorial, which was submitted to the Department of the Interior and was adversely reported upon.

Section 41 was subsequently amended during the ensuing debate:

in the House and Senate, and as finally enacted reads as follows, the amendments adopted being indicated by italics:

"41. All persons duly identified by the Commission to the Five Civilized Tribes under the provisions of section 21 of the act of Congress approved June 28, 1898 (30 Stat., 495), as Mississippi Choctaws entitled to benefits under article 14 of the treaty between the United States and the Choctaw Nation concluded September 27, 1830, may, at any time within six months after the date of *their identification as Mississippi Choctaws by the said commission*, make bona fide settlement within the Choctaw-Chickasaw country, and upon proof of such settlement to such commission within one year after the date of the said identification as Mississippi Choctaws shall be enrolled by such commission as Mississippi Choctaws entitled to allotment as herein provided for citizens of the tribes, subject to the special provisions herein provided as to Mississippi Choctaws, and said enrollment shall be final when approved by the Secretary of the Interior. The application of no person for identification as a Mississippi Choctaw shall be received by said commission after *six months subsequent to the date of the final ratification of this agreement and in the disposition of such applications all full-blood*

334 *Mississippi Choctaw Indians and the descendants of any Mississippi Choctaw Indians, whether of full or mixed blood, who received a patent to land under the said fourteenth article of the said treaty of 1830 who had not moved to and made bona fide settlement in the Choctaw-Chickasaw country prior to June 28, 1898, shall be deemed to be Mississippi Choctaws entitled to benefits under article 14 of the said treaty of September 27, 1830, and to identification as such by said commission, but this direction or provision shall be deemed to be only a rule of evidence and shall not be invoked by or operate to the advantage of any applicant who is not a Mississippi Choctaw of the full blood or who is not the descendant of a Mississippi Choctaw who received a patent to land under said treaty, or who is otherwise barred from the right of citizenship in the Choctaw Nation. All of said Mississippi Choctaws so enrolled by said commission shall be upon a separate roll."*

The rule of evidence that all full-blood Choctaws who had not removed to and made bona fide settlement in the Choctaw-Chickasaw country prior to June 28, 1898, should be deemed to be Mississippi Choctaws entitled to benefits under article 14 of the treaty of September 27, 1830, and identified as such by the Dawes Commission, incorporated in section 41 of the act of July 1, 1902, was introduced as an amendment to the bill by Mr. Curtis, and was drafted by one McMurray, attorney for the Choctaw Nation, and Assistant Attorney General Van Devanter.

XXX.

The passage of the act of July 1, 1902, ratifying said supplemental agreement and amendments to sections 41 to 44, inclusive, was opposed by Owen and the associates of Winton, who protested against the conditions contained in said amended sections relating to said Mississippi Choctaws as finally adopted.

The Indian appropriation act of March 3, 1903 (32 Stat., 982, 987), contained the following provision:

"That the sum of twenty thousand dollars, or so much thereof as is necessary, is hereby appropriated, to be immediately available, for the purpose of aiding indigent and identified full-blood Mississippi Choctaws to remove to the Indian Territory, to be expended at the discretion and under the direction of the Secretary of the Interior."

The special disbursing agent of the Dawes Commission was thereafter sent to Mississippi to carry out the provisions of this act. Said agent there organized parties and assembled all said Indians that could be found and induced to come at Meridian, Miss., from whence they were later transported in two parties by special trains to Indian Territory, where they were further maintained until subsequently placed upon allotments and supplied with tools, other equipment, and rations for six months, all the expenses thereof being paid by the United States. The total number of said Indians thus transported, maintained, and equipped at the expense of the United States was 420.

XXXI.

The act of April 26, 1906, entitled "An act to provide for the final disposition of the affairs of the Five Civilized Tribes of the Indian Territory, and for other purposes," contains the following:

"Sec. 2. That for ninety days after approval hereof applications shall be received for enrollment of children who were minors
335 living March fourth, nineteen hundred and six, whose parents have been enrolled as members of the Choctaw, Chickasaw, Cherokee, or Creek Tribes or have applications for enrollment pending at the approval hereof, and for the purpose of enrollment under this section illegitimate children shall take the status of the mother, and allotments shall be made to children so enrolled.

"Sec. 21.

* * * * *

"That heirs of deceased Mississippi Choctaws who died before making proof of removal to and settlement in the Choctaw country and within the period prescribed by law for making such proof may, within sixty days from the passage of this act, appear before the Commissioner to the Five Civilized Tribes and make such proof as would be required if made by such deceased Mississippi Choctaws; and the decision of the Commission to the Five Civilized Tribes shall be final therein, and no appeal therefrom shall be allowed." (34 Stat., 137, 145.)

One hundred and eighty-seven full-blood Mississippi Choctaws were enrolled under the provisions of section 2 of the above act.

XXXII.

The Dawes Commission received applications from approximately 25,000 persons for enrollment as Mississippi Choctaws. Of this

number 2,534 were identified by the commission, but of the persons so identified 956 failed to remove to Indian Territory or submit proof of their removal and settlement within the time required by law. The total number of applicants identified and finally enrolled and who have received allotments as members of the Choctaw Nation is 1,578, of whom only 833 appear on the roll of March 10, 1899, and of whom only 696 had contracts with Winton and his associates; 181 Mississippi Choctaw Indians had voluntarily removed to the Territory in 1889 and were received into the Choctaw Nation. They were carried on the rolls as Mississippi Choctaw Indians, making the total enrollment of 1,759. The 181 Indians heretofore mentioned are not parties defendant to this proceeding.

The funds derived from sales of allotted lands of enrolled Mississippi Choctaws, subject to the restrictions upon alienation prescribed by section 1 of the act of May 27, 1908 (35 Stat., 312), are held by the Government to the credit of the individual Indians entitled thereto. All other funds belonging to said enrolled Mississippi Choctaws are held as tribal funds, the names of said Mississippi Choctaws being carried on a separate roll.

XXXIII.

The Estate of Chester Howe.

1. Chester Howe, deceased, was for many years an attorney and counsellor at law, a resident of the Territory of Oklahoma, and a practitioner therein. In 1896 he removed his office and place of practice to Washington, D. C., where he continued to reside until his death, which occurred October 1, 1908, while on a visit to Oklahoma.

336 2. In the early part of the year 1899 said Howe, by virtue of an oral agreement made with Louis P. Hudson, acquired an undivided one-third interest in all contracts taken by said Hudson and Arnold for the firm of Hudson & Arnold, with individual Mississippi Choctaw claimants, the purpose of said contracts being to secure the rights of said Mississippi Choctaws to allotments of tribal lands of the Choctaw Nation and to remove said Indians to the Indian Territory.

The said interest thus acquired by said Howe included approximately 465 contracts with individual Mississippi Choctaw claimants taken by L. P. Hudson and J. E. Arnold, or the firm of Hudson & Arnold, prior to the dissolution of said firm, in the month of August, 1901.

3. The services contemplated by said agreement to be rendered by said Howe were legal services before Congress and the Interior Department in representing and protecting the interests of said Indians and establishing their rights in and to lands in the Choctaw Nation.

4. Large sums of money were borrowed by said Arnold and said Hudson from various persons on account of said contracts with said individual Mississippi Choctaw claimants, the amount of which is not

disclosed, for which said Hudson and said Arnold failed to account to said Howe for any part thereof. Because of this fact said Howe became greatly dissatisfied in the spring of 1902 with the Mississippi Choctaw business and decided to withdraw therefrom, and notified his correspondents accordingly. Thereupon about May 12, 1902, said Arnold went to Washington and on that date procured the further assistance of said Howe by the acknowledgment, in writing, of the agreement previously made by Hudson with Howe that the latter should receive one-third of the fees in the Hudson and Arnold contracts; and also by signing an agreement authorizing the employment of J. H. Ralston, of the firm of Ralston & Siddons, to assist said Howe. Thereafter, in May, 1902, Howe employed the firm of Ralston & Siddons to assist him in securing the rights of said Mississippi Choctaw applicants, upon a contingent fee of \$3,000, to be paid in sums of \$250 or more by Howe out of his own fees as fast as the same could be collected, the amounts thus collected to be evenly divided between said firm of Ralston & Siddons and said Howe until the fee should be paid.

5. Between the months of December, 1900, and July 1, 1902, said Howe was actively engaged in pressing the claims of certain Mississippi Choctaws with whom J. E. Arnold and others had individual contracts to allotable shares of lands and money of the Choctaw Nation upon individual Congressmen and Senators, the Subcommittee on Indian Affairs of the House of Representatives, the officials of the Indian Office, and the Secretary of the Interior.

It is not established by the evidence, however, that the legal services rendered by Howe were effective in establishing the claim of said Mississippi Choctaws to citizenship in the Choctaw Nation, or that such legislation as was enacted, and under which Mississippi Choctaws received allotments in the tribal lands of said Choctaw Nation, was the result of his professional services.

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XXXIV.

Ralston & Siddons.

1. In May, 1902, the firm of Ralston & Siddons received and accepted the following offer of employment from Chester Howe:

WASHINGTON, D. C., May 16, 1902.

Messrs. Ralston & Siddons, Washington, D. C.

GENTLEMEN: I have an undivided one-third interest in certain contracts made with Mississippi Choctaw Indians residing in Mississippi which are deposited in the First National Bank at Ardmore, Indian Territory, and I hereunto attach a list of the names of said parties, which was forwarded to me by Mr. L. P. Hudson, who took the contracts.

For and in consideration of your services in assisting me to secure the rights of these parties I hereby agree to pay you the sum of \$5,000, contingent upon the securing to these parties their rights in

the Choctaw Nation in the Indian Territory, and to be paid to you in sums of \$250 or more as fast as the same can be collected from the parties, my agreement being that I will divide the amount collected evenly with you until the amount of this fee is paid.

I will make any additional contract necessary to carry out the letter and spirit of this agreement.

Yours,

(Signed)

CHESTER HOWE.

The contracts thus referred to in the above letter were the same contracts in which the intervenor James E. Arnold conveyed a one-third interest to Chester Howe by assignment dated May 23, 1901, and acknowledged May 12, 1902, referred to in finding 4, estate of Chester Howe.

2. In accordance with the terms of said agreement the firm of Ralston & Siddons thereafter conferred with and assisted said Howe in securing data and preparing arguments pertaining to the claims of Mississippi Choctaws before the Interior Department, and on two occasions in 1902, prior to the passage of the act of July 1, the senior member of said firm appeared with said Howe before the Senate Committee on Indian Affairs—once before the whole committee and once before a subcommittee—for the purpose of securing relief for Mississippi Choctaws, in legislation then pending.

3. Said intervening claimants, Ralston & Siddons, have not received any compensation directly or otherwise for their services and expenses in this matter.

XXXV.

James E. Arnold and Louis P. Hudson.

1. In the year 1898, some time after the passage of the Curtis Act of June 28, 1898, James E. Arnold, who was himself an applicant for citizenship in the Choctaw Nation, went to Mississippi and procured from a number of individual Indians residing there contracts to secure their rights as members of the Choctaw Nation for a consideration of one-half the lands and moneys that might thereafter be allotted to them.

338 Said Arnold employed one G. P. M. Turner, an attorney at law residing at Muskogee, Okla., to assist him in securing said contracts, and later accompanied said Turner to Mississippi, where they jointly produced at the hearings there, held by Commissioner McKennon, a number of applicants and their witnesses for identification. Many of said applicants and their witnesses were brought from a distance by wagons, at the expense of Arnold, but the number of applicants whose names were placed upon the McKennon rolls is not established.

2. On or about January 1, 1899, said Arnold formed a general partnership with the intervenor, Louis P. Hudson, a practicing lawyer, at Ardmore, Okla., under the firm name of Hudson & Arnold, attorneys at law, for the purpose of engaging in Indian citizenship

business generally and also in the claims of Mississippi Choctaws for identification and enrollment as members of the Choctaw Nation.

3. Said Arnold was not an attorney at law and was never admitted to practice as such. He applied November 2, 1899, for permission to practice as an agent before the Interior Department, and was officially recognized June 8, 1901, as agent for claimants before the Dawes Commission.

4. On or about the 1st of July, 1899, said Hudson, for and in behalf of the firm of Hudson & Arnold, entered into the verbal agreement referred to in findings 2 and 3, Estate of Chester Howe, whereby said Howe agreed to represent Mississippi Choctaw claimants before Congress and the Interior Department for an undivided one-third interest of whatever fees were realized by said firm from said contracts.

5. Between the months of December, 1900, and August, 1901, said Hudson & Arnold secured in their joint names several hundred contracts with individual Mississippi Choctaw claimants living in the State of Mississippi, and with other persons living outside of Mississippi who claimed the rights of Mississippi Choctaws. Some 83 of these contracts purport to be signed by mark. In some of the said contracts for sums ranging from \$50 to \$250, paid to them by the claimants as retaining fees, and agreement to pay further sums for each member of the claimants' families thereafter placed upon the tribal rolls, said Hudson & Arnold undertook as attorneys and agents to represent said claimants before the Dawes Commission, the Interior Department, or any other tribunal of competent jurisdiction, and to render all legitimate assistance in their power to secure the enrollment and allotment of said claimants as members of the Choctaw Nation. Fees in excess of \$30,000 were collected by said Hudson & Arnold under said contracts taken by them prior to August, 1901, from individual claimants. Less than 40 of the total number of persons purporting to have signed contracts were finally enrolled. No accounting was rendered by Hudson & Arnold to said Howe for any part thereof.

6. Throughout the hearings held by the Dawes Commission in Mississippi during the making of the second identification roll said Hudson & Arnold maintained offices in that State and were constantly engaged in the matter of securing contracts to represent individual applicants for enrollment and in bringing said applicants with their witnesses before the commission for identification. Many of said applicants and their witnesses were brought from a distance by wagons, at the expense of said Hudson & Arnold, who also furnished them board and lodging where necessary, pending the
339 hearings of their claims.

7. On the 19th of August, 1901, the partnership of Hudson & Arnold was dissolved by mutual consent, and thereafter each former partner continued separately in the business of securing Mississippi Choctaw claims—Arnold for himself and Hudson as an associate and equal partner of Chester Howe, under a continuation of the verbal agreement with Howe, referred to in finding 4. The subsequent activities of said Hudson in connection with the claims of

Mississippi Choctaws appear more fully in the findings relating to other intervenors hereinafter made.

8. On May 27, 1902, said Hudson was suspended from practice before the Dawes Commission, and on the 11th of July, 1903, after a trial at which he was represented by counsel, said Hudson was convicted of the charge of offering a worthless Mississippi Choctaw contract for sale and was disbarred from practice before the Department of the Interior and all of its bureaus.

9. Prior to the dissolution of the firm of Hudson & Arnold, beginning on or about April 1, 1901, and continuing thereafter until on or about April 1, 1903, said Arnold secured, in his own name upon three separate forms, contracts with approximately 638 individual Mississippi Choctaw applicants.

The contracts under the second form provided for the payment to Arnold of \$250 as attorney's fees when the applicant was identified by said commission as a Mississippi Choctaw, and a further sum of \$200 for each member of the family of said applicant when placed upon the tribal rolls and awarded an allotment. A majority of these contracts were made after the applicants had applied for identification, and the total number of said contracts secured by said Arnold was approximately 223, of which number 23 were signed with the name of the applicant and the remainder by mark, witnessed by the agents of said Arnold.

The contracts under the second form provided for the payment to Arnold of a cash retainer by each applicant from \$100 to \$250 and \$100 additional for each member of the applicant's family when placed upon the tribal rolls. The total number of contracts secured by said Arnold upon this form was approximately 208, of which 175 purported to be signed with the name of the applicant and the remainder by mark, witnessed by the agents of said Arnold.

These contracts were with claimants to Choctaw citizenship, not claiming as Mississippi Choctaws living in Mississippi. The contracts taken as aforesaid under the second form were taken during the same period as the Mississippi Choctaw contracts under the first and third forms referred to in this paragraph. These contracts under the second form were with persons living chiefly in the Indian Territory.

The third form of said contract provided for the removal of the applicants by Arnold to the Indian Territory and stipulated for the payment to Arnold of a sum equal to one-half the value of all lands and moneys thereafter allotted or that might become due said Indians as members of the Choctaw-Chickasaw Nation, with the further stipulation that should the applicant refuse to pay, as therein provided, said Arnold should have possession of the land for a period of fifteen years, with the right to rent or lease the same and apply the proceeds to the payment of said debt. The total number of contracts secured by Arnold upon this form was approximately 340 237, of which 37 purported to be signed with the name of the applicant and the remainder by mark, witnessed by the agents of said Arnold.

10. In the fall of 1902 and subsequently said Arnold obtained

large sums of money from the sale and assignment of said contracts to various persons and from loans obtained on said contracts to aid in the removal and subsistence of said Indians covered by said contracts. The amount expended by said Arnold for such purpose and the number of said Indians actually removed by him to the Indian Territory who received final enrollment as Mississippi Choctaws is not satisfactorily established by the evidence.

11. On May 28, 1904, Arnold was disbarred from practice before the Interior Department, upon the charge of selling worthless contracts with enrolled Mississippi Choctaws, known to have been void under the provisions of the act of May 31, 1900, to one E. A. F. Whollenberg. He instituted mandamus proceedings in the Supreme Court of the District of Columbia to compel his reinstatement, and on March 9, 1911, while said proceedings were pending, he was reinstated by the Secretary of the Interior, as per terms of the following letter:

DEPARTMENT OF THE INTERIOR.

WASHINGTON, March 9, 1911.

Mr. James E. Arnold, c/o Ralston, Siddons & Richardson, Washington, D. C.

SIR: I have before me your petition for restoration to practice as an attorney or agent in the prosecution of claims or matters before this department or any bureau thereof, the department having disbarred you by order dated May 28, 1904.

I note that you state that since your said disbarment you have studied for the ministry and have been ordained a minister; that you expect within a few weeks to leave this country and to pursue your new avocation in Mexico, under appointment of the Home Mission Board of the Northern Baptist Conference, and that your disbarment constitutes an impediment which you desire to have removed.

Moved by consideration suggested by this change in your profession, I very cheerfully accede to your request and have ordered that you be restored to practice as of and from this date. The heads of bureaus will be so notified.

Very respectfully,

(Signed)

R. A. BALLINGER, *Secretary*.

XXXVI.

James S. Bounds, Attorney in Fact for T. A. Bounds.

1. James S. Bounds intervenes by petition filed in this case under the jurisdictional act of May 29, 1908, by virtue of a power of attorney dated February 22, 1908, from T. A. Bounds, authorizing said intervenor to represent said T. A. Bounds in all matters pertaining to the latter's claims against Mississippi Choctaw Indians.

2. On or about April 1, 1901, said T. A. Bounds, a farmer and cattleman residing at Wortham, Texas, went to Mississippi to engage

in the business of securing the identification and enrollment of Mississippi Choctaws.

341 For this purpose he employed, shortly after his arrival in Mississippi, the firm of Hudson & Arnold to obtain contracts for him with individual Mississippi Choctaw claimants, and agreed to pay said firm \$50 for each contract thus secured.

Said Hudson & Arnold thereafter secured 70 contracts in the name of said Bounds with individual Mississippi Choctaw claimants, for which said Bounds paid said firm prior to August, 1901, the sum of \$3,500.

Said contracts were similar in form and substance to the contracts hereinafter referred to in Finding 1, claim of William N. Vernon.

3. After securing the foregoing contracts, as aforesaid, said Bounds went to the Indian Territory and there acquired the possessory rights through the purchase of improvements upon certain lands to enable said Indians to obtain the prior right to allotments thereon.

4. Between the months of November, 1901, and July, 1903, said Bounds removed a number of Mississippi Choctaws from Mississippi to the Indian Territory, where they were subsequently enrolled upon the final approved rolls and received valuable allotments in the lands of the Choctaw Nation.

Said Bounds paid the expenses incident to the removal of said Indians from their former homes in Mississippi to the Indian Territory, including cost of their subsistence en route, clothing where necessary, and other incidental expenses, and upon arrival in the Indian Territory furnished said Indians food, shelter, and other necessities.

5. All of said Indians thus removed subsequently repudiated their contracts with said Bounds, and a majority of them accepted allotments upon lands other than those previously selected for them by said Bounds.

XXXVII.

William N. Vernon.

1. William N. Vernon, an attorney at law, residing at Rockwall, Tex., went to the State of Mississippi on or about September 1, 1902, for the purpose of engaging in the business of removing Mississippi Choctaws from that State to the Indian Territory.

Vernon had previously moved one Indian from Mississippi to the Indian Territory in September, 1901, and placed him in possession of an allotment upon which Vernon had theretofore acquired the right to file by the purchase of the improvements thereon.

Sixty separate contracts were secured by Vernon with individual Mississippi Choctaw claimants, whereby the Indians in consideration of services rendered and to be rendered by Vernon, in establishing their rights as members of the Choctaw tribe and providing for their removal to the Indian Territory, agreed to pay said Vernon a sum equal to one-half of the value of all lands allotted to them, also one-

half of all timber thereon, and one-half of all moneys, including annuities, due or thereafter to become due, as members of said tribe.

Said Indians further agreed, upon the allotment of said lands, to lease the same with full power of control to Vernon for a period of five years, and to confer upon him the right to fence, clear, improve, lease, occupy, and rent said lands or any part thereof and market the minerals or products of the soil, for a period not exceeding five
342 years, applying the proceeds derived therefrom to the payments due said Vernon under the terms of said contracts.

2. Prior to September 1, 1902, said Vernon had spent considerable time and some money in ascertaining what lands could be obtained in the Choctaw Nation for the benefit and use of the Mississippi Choctaws, and had further obtained by the purchase of improvements thereon the possessory rights to said lands, so that said Indians might secure allotments thereon.

3. Between the months of September, 1902, and March, 1903, when he abandoned the project because of the provision made by the Government for the removal of Mississippi Choctaws by the act of March 3, 1903, said Vernon moved from Mississippi to the Indian Territory 60 Indians, who were subsequently enrolled on the final approved rolls of the Choctaw Nation; paid all of the expenses incident to their removal, including the cost of their subsistence en route, clothing, medicines, and other incidental expenses; and upon their arrival in the Indian Territory provided said Indians food, shelter, and other necessities, and placed them upon lands the possessory rights to which had been previously acquired by him, as aforesaid, and thereafter said Vernon further assisted each of said Indians until their respective allotments were obtained.

4. Said Vernon, after the lands were allotted, took individual leases from said Indians for terms ranging from two to five years to reimburse himself for expenses incurred in their behalf, and held the same until he was subsequently dispossessed therefrom.

The amount expended by said Vernon in conducting the removal and settlement of said Indians, as aforesaid, and the sums received by him from the proceeds of the leases taken from said Indians, are not established to the satisfaction of the court.

XXXVIII.

Joseph W. Gillett,

1. In the month of May, 1902, the intervenor, Joseph W. Gillett, a banker, then residing in Woodbine, Kans., visited the Indian Territory, and there entered into the following agreement with the intervenor, Louis P. Hudson:

ROFF, I. T., May 31, 1902.

"This contract made and entered into this 31st day of May, A. D. 1902, witnesseth that L. P. Hudson, party of the first part, hereby sells, transfers, delivers to J. W. Gillett, of Woodbine, Kans., contracts with twenty Mississippi Choctaw Indians, said contracts being

with the heads of families, and for a fee equal to one-half the value of the land received by them in Choctaw or Chickasaw Nations, said contracts being this day delivered to the said party of the second part, and in consideration of the delivery of said contracts and the agreement therein contained the party of the second part, agrees to place on deposit in the First National Bank of Roff, I. T., on this date, the sum of five hundred dollars, and on the 15th day of October, 1902, five hundred dollars, and when said Indians are brought to the Indian Territory and located on the lands selected by the parties to this contract and to the satisfaction of the party of the second part, the further sum of one thousand dollars; said sum of money to be and remain in the custody of the said bank until said Indians secure title to said lands, and transfer one-half of the same, over and above their homestead, one hundred and sixty acres, to J. W. Gillett, one of the parties to this contract; said transfer to be made within four years of this date, or as soon as said Indian can legally transfer same. And when said transfer is completed and a good and sufficient title is made to the said J. W. Gillett all of said money is to be turned over to L. P. Hudson, and no part hereof is to be paid to the said L. P. Hudson prior to securing of said title, except the sum of three hundred dollars, which is to be used for the purpose of moving the said Indians from Mississippi to the said Indian Territory, or such part of the said sum of three hundred dollars as may be actually necessary for the purpose named herein.

"The party of the first part agrees that if any of said Indians dies before allotment that the contract made by said Indian shall be replaced by one equally as good; and when said title is complete the party of the second part agrees to pay the party of the first part the further sum of two thousand dollars, making a sum total of four thousand dollars (\$4,000.00).

"And if title ever comes to party of the first part through these contracts the same is to revert to the party of the second part, and if for any reason the Indians named in the contract fail to secure title to the said land or fail to transfer the same to the parties to this contract, the sum of money deposited or paid by the party of the second part are to be refunded to him by the First National Bank of Roff, custodian thereof."

2. August 22, 1902, a further contract was made between said Hudson and Gillett as follows:

"This contract, made and entered into this 22d day of August, 1902, witnesseth that L. P. Hudson, party of the first part, hereby sells, transfers, delivers to J. W. Gillett, of Woodbine, Kansas, party of the second part, contracts with nineteen (19) Mississippi full-blood Choctaw Indians; said contracts being made with heads of families, and for a fee equal to half ($\frac{1}{2}$) the value of the land and money received by them in the Choctaw and Chickasaw Nations, said contracts being this day delivered to the said party of the second part, and in the consideration of the delivery of the nineteen Indian contracts and the agreement therein contained the party of the second part pays the said first party the sum of nineteen hundred dollars (\$1,900), the receipt of which is hereby acknowledged.

"And the said first party agrees to bring without cost to second party the said nineteen Indians from Mississippi and locate them on land in the Indian Territory selected by the parties to this contract to the satisfaction of the party of the second part.

"And when the said nineteen Indians transfer to the said J. W. Gillett half ($\frac{1}{2}$) of their allotment of land and money, and when said transfer is complete and a good and sufficient title is made to the said J. W. Gillett, the said J. W. Gillett agrees to pay to L. P. Hudson the further sum of nineteen hundred dollars (\$1,900).

"The party of the first part further agrees that if any one or more of said Indians die before allotment, that the contract or contracts made with said Indians shall be replaced by one equally as good, and if title ever comes to party of the first part through these contracts the same is to revert to the said second party.

"And if for any reason the Indians named in the contract fail to secure title to the said land and money or fail to transfer same
344 to parties to this contract, the sum of all money paid the said L. P. Hudson, party of the first part, by the said J. W. Gillett, party of the second part, is to be repaid the said J. W. Gillett, party of the second part, by the said L. P. Hudson, party of the first part."

3. Said Hudson subsequently removed from Mississippi and delivered to said Gillett in the Choctaw Nation 22 Mississippi Choctaw Indians, for which said Gillett paid Hudson the sum of \$100 for each Indian thus delivered and \$25 each additional to cover the cost of removal.

Said Hudson had previously assigned and delivered to said Gillett his original attorney's contracts with said Indians, which were similar in form and substance to the contract hereinbefore set out in finding 1 of the Vernon claim.

4. During the months of January and February, 1903, Gillett secured additional contracts in similar form in his own name in Mississippi with various individual Mississippi Choctaw claimants, some of whom had been previously identified, and removed them to the Indian Territory.

Said Gillett thereafter maintained said Indians, including those delivered to him by said Hudson, in said Territory, secured by the purchase of improvements, valuable land upon which they might allot, assisted them in the matter of allotment, furnished supplies, clothing, tools, etc., and otherwise assisted said Indians to comply with the terms of the act of July 1, 1902, requiring their settlement and continual residence in that country.

5. The said Gillett took leases from nearly all of the Mississippi Choctaws with whom he had contracts for their allotments of 320 acres each, and agreed to pay them not less than \$100 per annum for each allotment. The average rent per annum of the cultivated lands for the first year was \$2 per annum and of the grazing lands 50 cents per annum. The proportion of cultivated land in these allotments when he took the leases was not over 10 per cent, for the second year 20 per cent, and for the third year about 35 per cent. He or his

assignees were in possession of most of these allotments on October 16, 1907, when testimony on his claim was taken.

XXXIX.

Choctaw-Chickasaw Lands and Development Co.

1. July 7, 1903, Chester Howe, in his own behalf and as attorney in fact for Louis P. Hudson, entered into an agreement with four individuals therein named, whereby Howe agreed to turn over to such individuals 51/100 of an interest in all contracts theretofore taken with 100 Choctaw Indians to secure the removal and allotment of said Indians in the Indian Territory. The individuals named agreed upon their part to form a corporation, to be known as the Choctaw-Chickasaw Lands and Development Co., and to furnish money, estimated at \$15,000, to carry out the agreement. The capital stock of the corporation was fixed at not less than \$100,000, of which Howe and Hudson were to receive 49 per cent, and it was agreed that upon the organization of the company all rights of the parties thereto were to be legally conveyed to the company.

2. The corporation was thereafter organized under the laws of Delaware. In accordance with the foregoing agreement, sub-
345 scriptions to the capital stock aggregating \$3,525 were obtained, only a portion of which, however, was paid in cash.

3. From subscriptions thus obtained and advances made by individual stockholders said company erected during the summer of 1903 fifteen wooden cottages or shacks, at a cost, including furniture, of approximately \$55 to \$60 each, near the town of Roff, in the Indian Territory, and expended various other sums in preparing accommodations for the Indians which the company expected thereafter to move from Mississippi, in accordance with the contracts theretofore made with said Indians by said Howe and Hudson.

4. Said company failed, however, to effect the removal of any Mississippi Choctaws entitled to allotment to the Indian Territory, and several months after the arrival in the Territory of the Indians who were moved there by the Government said company abandoned the entire enterprise.

XL.

J. J. Beckham.

1. In the summer of 1901 J. J. Beckham and R. J. Ellington, residing in Mexia, Tex., entered into a partnership agreement for the purpose of engaging in the business of securing the identification and allotment of lands to Mississippi Choctaws in the Indian Territory.

Under the terms of said partnership said Beckham agreed to furnish the money and Ellington the time and labor required for the enterprise, and the proceeds were to be divided equally between them.

2. After the passage of the act of July 1, 1902, said Beckham, in accordance with the foregoing agreement, furnished money, which

was used to assist 15 Mississippi Choctaws, more or less, in the State of Mississippi, to appear before the Dawes Commission for identification.

3. In July, 1903, said Ellington transported to the Choctaw Nation and subsisted en route, with funds furnished by said Beckham, nine Mississippi Choctaws, from whom Ellington had previously secured separate contracts similar in form and substance as those set out in the finds of the Vernon claim.

4. Shortly thereafter said Ellington became dissatisfied with the enterprise and conveyed by an assignment in writing his entire interest therein for a nominal consideration to said Beckham, who, after the arrival of said Indians in the Choctaw Nation and for a period of about six months, furnished them supplies, when said Indians voluntarily left the care and protection of said Beckham and repudiated their contracts with him.

5. The Indians were located on segregated lands, not subject to allotment, by Ellington and Beckham, who expected to reimburse themselves for the expenses of removal by leasing their allotments. After the assignment by Ellington of his interest to Beckham the improvements were leased by Beckham to third parties for one year, for which he received \$600. They were then turned over to one Sam Downing, who was to get what he could for them for the benefit of the Indians, and Beckham took Downing's note for the consideration, after which Beckham got completely out of the business, and does not know whether Downing was thereafter paid for the improvements. Most of these Indians were afterwards enrolled and allotted by the Dawes Commission.

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XLI.

David C. McCalib.

1. On or about April 1, 1903, the intervenor, David C. McCalib, a practicing physician, then residing at Callero, in the Indian Territory, purchased from one W. H. Gallaspy, an attorney of Hickory, Miss., for the sum of \$12,000, more or less, all the latter's interest in and to certain contracts and powers of attorney with 103 enrolled Mississippi Choctaws whom Gallaspy had moved the previous month from their homes in Mississippi to Callero in said Territory.

2. Said contracts provided for the payment of a contingent fee equal to one-half of the value of the recovery in lands and money of said Indians, and also that said Gallaspy might associate with him any other person or persons and assign such rights under said contracts as he deemed necessary to secure the performance of his duties and obligations thereunder, and that said contracts should be regarded as having been made for the benefit of such other persons.

3. Said Gallaspy for the further sum of approximately \$2,600 transferred and assigned his accounts for expenses and advances theretofore made against certain individual Indians to said McCalib, who thereupon assumed and undertook the completion of the services provided for in said contracts.

4. Shortly thereafter said McCalib sold and transferred 20 of said contracts to one J. H. Holland for the sum of \$5,000, more or less.

5. Immediately after acquiring the interest of said Gallaspy in said contracts and upon the Indians producing their identification papers, said McCalib proceeded to assist said Indians to secure their rights by maintaining them in the Choctaw Nation, furnishing them supplies and subsistence when needed, securing them the right to allotted lands by the purchase of title to improvements, building them houses, furnishing them medical attention, etc., for all of which said McCalib expended various sums.

6. Said McCalib secured from each of said Indians leases of the lands filed upon for allotment for a period of five years at an annual rental of \$65 for each allotment, but finding the business unprofitable, said McCalib in 1906 abandoned the entire enterprise, including said contracts, and removed from the Territory. Said McCalib has received no compensation for his services or expenses in this matter, and the contracts filed by him show that more than one-half of the Indians against whom his claim is made were under contract with Charles F. Winton, James E. Arnold, and others, and that the said Gallaspy was representing said Indians in the prosecution of their claims to citizenship in the Choctaw Nation at the same time they were also being represented in the same matter by said Charles F. Winton and others.

XLII.

Madison M. Lindly, Walter S. Field, and John London.

1. In 1896 and prior thereto Madison M. Lindly was an attorney at law residing at South McAlester, Ind. T.; Walter S. Field was an attorney at law residing at Oklahoma City; and John London was an attorney at law residing at Alma, Ark.

347 2. The claims of Walter S. Field, M. M. Lindly, and John London are predicated upon an alleged association with Chester A. Howe, James E. Arnold and Louis P. Hudson.

3. M. M. Lindly filed his first petition May 7, 1909, claiming then in his own right the sum of \$200 for services rendered and expenses incurred in behalf of the Mississippi Choctaws and gave his testimony in support of the same. On May 17, 1909, Lindly filed a second intervening petition, for the first time alleging an association as set forth in the second paragraph of this finding. In his second deposition he supports the allegations of his second petition.

4. On June 9, 1910, Walter S. Field filed his intervening petition herein, having theretofore acted either as attorney at law or attorney in fact for M. M. Lindly. William N. Vernon and T. A. Bounds, all of whom have intervened herein.

5. On February 19, 1912, John London filed his intervening petition herein and shortly thereafter gave his deposition in support thereof.

6. It appears from the record that in the fall of 1896 Lindly or Field (which one not definitely shown) drafted a contract in form to

comply with section 2103, Revised Statutes; accompanying the contract drafted in triplicate were three authorizations, by the terms of which certain bands or headmen of the Mississippi Choctaw Indians were to be commissioned by the tribes as their representatives to execute the above band or tribal contract. This band or tribal contract was to be in favor of M. M. Lindly, the spaces for the parties signatory thereto being left in blank. In June, 1897, the formal band contract with the formal authorizations heretofore mentioned was delivered to John London by M. M. Lindly in his office at S. McAlester, Okla. London was to take the same, proceed to Meridian, Miss., and there meet James E. Arnold and procure its proper execution, Lindly at the time advancing to said London \$42 expense money. London accepted the employment, proceeded to Meridian, Miss., but never did meet James E. Arnold. A few days thereafter London, in company with a sewing-machine agent and furniture peddler, together with a colored interpreter, visited various localities in Mississippi inhabited by Mississippi Choctaw Indians. He found no organized tribes or band of Mississippi Choctaw Indians, but did secure the individual signatures to said contract of one W. E. Riley, a relative of London's wife, and an Indian preacher, Ben Hottubee. London then returned to his home at Alma, Ark., and some time after his return received by mail a return of the said contract purporting to be signed by either seven or nine individual Mississippi Choctaw Indians. London afterwards delivered the contract to Lindly, and Lindly at some date in 1898 delivered it to Walter S. Field, and he in turn delivered it to Chester A. Howe in Washington. What finally became of the contract is not shown to the satisfaction of the court. By whom or when it was lost does not appear. The contents of the contract, the identity of the Indians signing the same, as well as the acknowledgment and proper execution of the same does not appear to the satisfaction of the court. There were no tribes, bands or headmen among the Choctaw Indians of Mississippi and the contract as signed was not a band or tribal contract.

7. On a date subsequent to or late in the year 1898 a written document purporting to be a contract with the Mississippi Choctaw Indians was informally left with the Commissioner of Indian Affairs at his office in Washington. The same was never filed, and after the lapse of more than a year was refused approval by the commissioner because of an alleged absence of jurisdiction to consider the approval of the same. Whether this document was the identical paper—the so-called band contract—delivered by Lindly to Field does not appear and the authenticity of the same is not established to the satisfaction of the court.

8. What contractual relationship existed between Lindly, Field, London, James E. Arnold, and Louis P. Hudson is not shown. It does appear that Lindly and Field had some business connection with Chester A. Howe, either as attorney and client or employees of Howe, to which the Mississippi Choctaw Indians were not a party. The record discloses that Walter S. Field had no contract, either band or individual, with any Mississippi Choctaw Indians. His name does not appear on any brief filed before any committee of Congress, the

Dawes Commission, the Indian Office, or before any court considering their claims to citizenship in the Choctaw Nation. No authority from the Mississippi Choctaw Indians appears for Fields' activity in their behalf, and whatever services he performed in their behalf was without their knowledge or acquiescence in the same.

9. John London's relationship to Lindly was that of an employee engaged to perform specified services for an agreed portion, less expenses, of whatever fees might accrue to Lindly from such contracts as London might procure to represent the individual Mississippi Choctaw Indians. London was in nowise associated or connected in the matter of the claim of Chester A. Howe or Walter S. Field.

10. The identity of individual claimants resident in Mississippi or elsewhere who employed said Lindly prior to May 31, 1900, or thereafter, to represent them in asserting their claims to citizenship and who were subsequently enrolled, if any, in the Choctaw Nation, is not established.

11. Nor is the fact established that said Lindly employed the interveners James E. Arnold or Louis P. Hudson to secure contracts for him with individual Mississippi Choctaw claimants, or that contracts were ever taken by said Arnold or Hudson as agents for said Lindly, Field, or Howe.

12. Walter S. Field was active in intervening and otherwise impressing upon some individual Congressmen and United States Senators his views as to the necessary and proper legislation for the procurement of the rights of the Mississippi Choctaw Indians to citizenship in the Choctaw Nation. The extent and effect of said service does not appear, nor does it appear that the legislation finally enacted was the result of said interviews or service.

13. No express copartnership is shown to the satisfaction of the court to have existed between Field, Lindly, and Howe to which London, James E. Arnold, and Louis P. Hudson were silent partners by oral agreement.

XLIH.

Thomas B. Sullivan and Joseph H. Neill.

1. In the spring of 1897 Thomas B. Sullivan, a practicing attorney, and Joseph H. Neill, a merchant, both residing at Cambridge, Miss., were jointly employed under verbal agreement by Charles F. Winton, to assist him to secure contracts in Mississippi with Choctaw claimants, for a consideration of a one-fourth interest in said Winton's share of the recovery under said contracts.

2. Said Sullivan and Neill thereafter and until May, 1903, secured a number of said contracts for said Winton in the joint names of Winton and his associates, Owen, Daley, and Logan, and also cooperated with and assisted said Winton in bringing said Indians and their witnesses before Commissioner McKennon for identification and enrollment at the hearing conducted by him in Mississippi in 1899.

3. May 6, 1901, said Winton, for the purpose of reducing the terms and conditions of said verbal agreement to written form, entered into the following contract with said Sullivan and Neill, which was duly executed by the parties hereto:

STATE OF MISSISSIPPI,

Leake County:

May the 6, 1901.

This agreement witnesseth, That for and in consideration of services rendered and to be rendered in securing contracts with the Mississippi Choctaws, and in securing the counsel and consent of the Mississippi Choctaws to agree to accept Walter S. Logan, Charles S. Daley, Robt. L. Owep, and C. F. Winton as counsel before the U. S. Congress, Indian Territory, before the Dawes Commission, and in all things in securing their rights and property, identification and enrollment in the Choctaw Chickasaw Nation, I, Charles F. Winton, party of the first, do hereby agree with T. B. Sullivan and J. H. Neill, party of the second part, to pay over to him the sum of money equal to one-fourth ($\frac{1}{4}$) part of my net interest in said contracts, counsel fees, manual and legal services, and all or any other labor, legal or otherwise, needed to be performed in the State of Mississippi pertaining to said Mississippi Choctaws. The said interest to be paid immediately after the recovery by me of such interest in the same proportion as I receive the same.

It being understood and agreed that the party of the first part is to provide for the raising of the means for moving said Choctaws and assisting them in selecting, locating, and renting lands to which they are entitled in the Indian Territory. And T. B. Sullivan and J. H. Neill, party of the second part, in consideration of these presents, hereby agrees to use his good offices and to make active efforts in securing consent and co-operation of the Mississippi Choctaws with Charles S. Daley, C. F. Winton, et al., and in securing contracts with said Mississippi Choctaws, and in influencing the Indians to co-operate in good faith and good spirits in perfecting and fulfilling the contracts aforesaid. And the party of the second part further agrees to assist in doing such acts as are necessary under law to obtain and make valuable the estate to which the said Mississippi Choctaws are entitled.

In witness whereof we have hereunto set our hands and seals on the sixth day of May, 1901, at Carthage, in the State of Mississippi.

C. F. WINTON.	[SEAL.]
T. B. SULLIVAN.	[SEAL.]
J. H. NEILL.	[SEAL.]

350 4. In the course of their employment said Sullivan and Neill, by direction of Winton, conducted 36 proceedings before the chancery court in Mississippi for the appointment of guardians of minor and incompetent Indians with whom Winton desired to contract.

5. During the month of March, 1903, said Sullivan and Neill, in

further pursuance of their said employment, moved 22 Mississippi Choctaws from Mississippi to the Indian Territory and were reimbursed the amount of their expenses by Robert L. Owen.

6. Said Sullivan and Neill have not received any compensation directly or indirectly for their services or expenses in this matter.

XLIV.

One Alfred J. Lee, a citizen of Oklahoma, on December 15, 1911, recovered six judgments aggregating \$5,105 against each of six Mississippi Choctaws in the district court of Carter, Okla., for alleged services in securing a provision in the act of April 26, 1906, a part of the same legislation for which claim has been made in this suit, and against some of the Mississippi Choctaws with whom the claimants in this suit claim to have contracts.

XLV.

The petitions and intervening petitions of Melvin D. Shaw, James O. Poole, and John W. Towles have not been sustained by any competent evidence in the record, and no findings have been made with reference to said claims.

XLVI.

In answer to a call by this court the Secretary of the Interior, on May 18, 1907, transmitted a schedule showing the lands selected in allotment by enrolled Mississippi Choctaws, which shows the names of the several Mississippi Choctaws enrolled, with the names and a description of the lands allotted as homestead and lands exclusive of homestead to them, respectively, together with the identified number and the roll number of each. The identified number and the roll number are not the same. To illustrate: The roll number of Mary Jane Jefferson is 1419 and her identified number is 2515. Included in said list of persons to whom lands were allotted as homestead and also exclusive of homestead are the names of 137 persons designated as "New Born Mississippi Choctaws," their roll numbers being from 1 to 137, inclusive. The total number to whom allotments were made was 1,578. The total number of persons identified as Mississippi Choctaws was 2,534. Some of those identified were therefore never enrolled.

Conclusion of Law.

Upon the foregoing findings of fact the court decides, as a conclusion of law, that each of the several petitions and intervening petitions herein be, and the same are hereby, dismissed.*

Sample Form of Contracts Taken in the Case.

Memorandum of agreement between the following persons, Choctaw Indians, and known as Mississippi Choctaws, being United States citizens, and wives and children of such Choctaw Indians, the said children acting through their guardians, as follows: Sandus Boges, of Madden, Leake County, Miss. (a single man), parties of the first part, and Charles S. Daley, attorney and counselor at law, of the borough of Richmond and city and State of New York, party of the second part.

The said parties of the first part have retained and employed, and do hereby retain and employ, the party of the second part as their attorney to look out for, protect, defend, and secure their interest in the lands in the Indian Territory to which they are or may be entitled as Mississippi Choctaws or as members of the Choctaw Nation, and to procure the recognition of their rights as such Mississippi Choctaws and as members of the Choctaw Nation in said lands and in and to any funds which have heretofore arisen or may hereafter arise from the Choctaw-Chickasaw lands.

It is contemplated and understood that the said party of the second part shall and may associate with himself such other attorneys and counselors at law and other persons and assign such rights hereunder as he may deem necessary to enable him to perform, or secure the performance of, the duties and obligations assumed by him in accepting such retainer and employment. This agreement is made for the benefit of such persons and others aforesaid as shall be associated with the said Daley, as well as himself.

It is agreed that the said Charles S. Daley shall receive as compensation for the services of himself and his associates, as aforesaid, to be rendered in and about such employment and retainer, including the services which have been heretofore rendered and expenses incurred by C. F. Winton and his associates from the year 1895 to date in securing the passage of the act of Congress of June 7, 1897, requiring the Commission to the Five Civilized Tribes to report on the rights of the Mississippi Choctaws; the act of Congress of June 28, 1898, requiring the Commission to the Five Civilized Tribes to identify the Mississippi Choctaws, and that non-residence in Indian Territory should not be construed to deprive the Mississippi Choctaws of their rights and privileges under the laws and treaties of the United States, etc.; the act of May 31, 1900, recognizing the rights of the Mississippi Choctaws to make settlement in the Choctaw-Chickasaw country, etc., and various other services incidental thereto, which services have been in relation to the same matter and of which the parties of the first part have had and are to have full benefit, a sum of money equal to one-half ($\frac{1}{2}$) of the value of the net recovery of or for the parties of the first part in land and money or money values, as Mississippi Choctaws or as citizens of the Choctaw Nation, estimating the land at its true and actual value at the time that such compensation be-

comes due and payable; said compensation to be due and payable as follows, namely: One-third ($\frac{1}{3}$) thereof to accrue and be due one year and one day from the date of the patents issued to the parties of the first part, one-third ($\frac{1}{3}$) thereof to accrue and be due three
352 years and one day from the date of said patent, and one-third ($\frac{1}{3}$) thereof to accrue and be due five years and one day from the date of said patent.

The parties of the first part hereby authorize and empower the said party of the second part to rent and lease the said lands, in his discretion, and in the interest of the parties of the first part, and to collect and receive the rent and income coming therefrom.

The parties of the first part also authorize and empower said party of the second part to locate and select the lands to be allotted to the parties of the first part, including a homestead of 160 acres of land, in his discretion, so as to secure the just rights of the parties of the first part.

The parties of the first part also authorize and empower the party of the second part, as their agent, to advertise and invite buyers by the usual methods, and to sell and convey such lands at not less than the value appraised by the U. S. Commission to the Five Civilized Tribes, and to give good and sufficient deeds and assurances of title therefor whenever the same may be lawfully sold, and to collect and receive the purchase price thereof, and to give proper receipts, releases, and acquittances therefor; but this is not to include the homestead of one hundred and sixty acres. The moneys so collected and received, as aforesaid, by the party of the second part shall be applied:

1. To the payment of the amount which the party of the second part is to receive under and by virtue of the terms of this agreement for his expenses and services and the expenses and services of his said associates or assigns.

2. To pay the balance thereof to the parties of the first part.

It is contemplated that in and about the rental, leases, location, and sale of the said lands the party of the second part shall employ the said C. F. Winton to do the practical and expert work in connection with the same.

It is also agreed that the actual expenses and disbursements connected with such employment, or incurred in protecting the rights of the said parties of the first part, shall be first paid out of any recovery to be had herein, and the party of the second part is authorized to make such payments or to reimburse himself therefor out of any moneys coming into his hands by virtue of the provisions of this agreement, before dividing said moneys, as hereinbefore provided.

It is contemplated that the expense of the removal of the said Mississippi Choctaws from their present places of residence to the said Choctaw Nation may be a part of the expenses connected with such employment and the protection of such rights.

The party of the second part is authorized to make and incur such expenses and disbursements in connection with the premises, the same to be repaid as hereinbefore provided.

The parties of the first part agree to do anything that may be necessary for them to do or required of them in connection with the

premises, including the signing and execution of such papers or documents that may be necessary or proper, in accordance with the rules and regulations of the public officials having the matter in charge.

This contract is in place of any and all previous contracts in regard to the securing of the rights of the parties of the first part to lands and money values due them as members and citizens of the Choctaw Nation in Indian Territory.

353 The parties of the first part further agrees that the terms and stipulations of this contract shall be binding on his heirs, executors, and assigns, and that ——— is hereby appointed executor of the party of the first part, and is instructed faithfully to carry out the terms of this contract.

In witness whereof we hereto attach our hands and seals on this the 12th day of July, nineteen hundred and one, in the State of Mississippi.

Parties of the first part:

SANDUS (his x mark) BOGES.

Witnesses:

1. E. J. PEARSON.
2. H. S. HALBUT.

Contract 2.

We, the undersigned, claiming to be Choctaw Indians by blood, and claiming the right to be enrolled as members of the Choctaw tribe of Indians, in the Indian Territory by virtue of the treaties between the United States and the Choctaw tribe of Indians, and under and by virtue of the acts of Congress providing for the enrollment and allotment of the Choctaw Indians, have this day entered into the following contract and agreement with L. P. Hudson and J. E. Arnold of Ardmore, Ind. Ter., parties of the first part, and ourselves and our heirs, to wit:

We hereby agree to employ the said L. P. Hudson and J. E. Arnold to appear for us and as our attorneys and agents and authorize them to institute all necessary proceedings and do any and all things necessary to be done by said attorneys and agents to secure our rights as members of the tribe of Choctaw Indians in the Indian Territory, and to assist us in any and all legitimate ways to secure our rights in the said Choctaw Nation.

And we hereby agree to pay to the said L. P. Hudson and J. E. Arnold the sum of \$250.00 as a retainer fee in the said case; the said sum of \$250.00 to be due and payable at the date of this contract (which is paid). And we further agree to pay to the said L. P. Hudson and J. E. Arnold the further sum of \$100.00 for each member of our family whom they represent under this contract, when said party is placed upon the Choctaw tribal rolls and awarded an allotment of their proportionate share of lands belonging to said tribe.

The said L. P. Hudson and J. E. Arnold agree upon their part to represent the parties of the second part before the Dawes Commission and the Interior Department or any other tribunal of competent

jurisdiction, and to do all in their power that is legitimate to secure the enrollment and allotment of said parties of the second part as members of the tribe of Choctaw Indians in the Indian Territory.

And it is further agreed and understood by the parties to this contract that the same covers all of the agreements between the parties hereto and that there is no verbal contract of any kind in addition thereto, and that the sole and only services of the parties of the first part to be rendered to the parties of the second part are contained in this contract.

HUDSON & ARNOLD,
JOSEPHINE C. SMITH.

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Contract 3.

We, the undersigned, claiming to be Choctaw Indians by blood, and claiming the right to be enrolled as members of the Choctaw Tribe of Indians in the Indian Territory by virtue of the treaties between the United States and the Choctaw Tribe of Indians and under and by virtue of the acts of Congress providing for the enrollment and allotment of the Choctaw Indians, have this day entered into the following contract and agreement with J. E. Arnold, of Ardmore, Indian Territory, party of the first part, and ourselves and our heirs, to wit:

We hereby employ the said J. E. Arnold to appear for us and as our attorney and agent and authorize him to institute all necessary proceedings and do any and all things necessary to be done to secure our rights as members of the tribe of Choctaw Indians in the Indian Territory, and to assist us in any and all legitimate ways to secure our rights in the said Choctaw Nation.

And we hereby agree to pay the said J. E. Arnold the sum of \$250.00 as attorney's fees in said case, when we are identified as Mississippi Choctaws by the Dawes Commission. The said sum of \$250.00 to be due and payable at the date we are identified as Mississippi Choctaws.

And we further agree to pay the said J. E. Arnold the further sum of \$200.00 for each member of our family whom he represents under this contract when said party is placed upon the Choctaw tribal rolls and awarded an allotment of their proportionate share of lands belonging to said tribe.

And we hereby further agree that any sum of money the said J. E. Arnold may have heretofore advanced us at any place or any time while acting as our agent and attorney, or that he may hereafter advance us for necessities that we have had to have, or for necessities that we may in future require while obtaining our said allotments, may be charge-against us in addition to the attorney's fees we have herein and hereby agreed to pay, and we hereby agree and promise to pay said sum or sums of money, together with the attorney's fees, the day we receive our said allotments of the lands in the Choctaw or Chickasaw Nations in the Indian Territory.

The said J. E. Arnold agrees upon his part to represent the parties of the second part before the Dawes Commission and the Interior

Department or any other tribunal of competent jurisdiction, and to do all in his power that is legitimate to secure the enrollment and allotment of said parties of the second part as members of the tribe of Choctaw Indians in the Indian Territory.

And it is further agreed and understood by the parties to this contract that the same covers all of the agreements between the parties hereto, and that there is no verbal contract of any kind in addition thereto, and that the sole and only service of the party of the first part to be rendered to the parties of the second part are contained in this contract.

This the 2d day of December, A. D. 1902,

J. E. ARNOLD.

EMILY (her x mark) BAPTISTE.

Witnesses:

J. A. TIPPIT.

L. J. TIPPIT.

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Contract 4.

We, the undersigned, claiming to be Choctaw Indians by blood, and claiming the right to be enrolled as members of the Choctaw Tribe of Indians in the Indian Territory by virtue of the treaties between the United States and the Choctaw Tribe of Indians and under and by virtue of the acts of Congress providing for the enrollment and allotment of the Choctaw Indians, have this day entered into the following contract and agreement with J. E. Arnold, of Ardmore, Ind. Ter., party of the first part, and ourselves and our heirs, to wit:

We hereby agree to employ the said J. E. Arnold to appear for us and as our attorney and agent and authorize him to institute all necessary proceedings and do any and all things necessary to be done by said attorney and agent to secure our rights as members of the tribe of Choctaw Indians in the Indian Territory, and to assist us in any and all legitimate ways to secure our rights in the said Choctaw Nation.

And we hereby agree to pay to the said J. E. Arnold the sum of \$250.00 as a retainer fee in the said case. The said sum of \$250.00 to be due and payable at the date of this contract. And we further agree to pay to the said J. E. Arnold the further sum of \$100.00 for each member of our family whom he represents under this contract when said party is placed upon the Choctaw tribal rolls and awarded an allotment of their proportionate share of lands belonging to said tribe.

The said J. E. Arnold agrees upon his part to represent the parties of the second part before the Dawes Commission and the Interior Department or any other tribunal of competent jurisdiction, and to do all in his power that is legitimate to secure the enrollment and allotment of said parties of the second part as members of the tribe of Choctaw Indians in the Indian Territory.

And it is further agreed and understood by the parties to this contract that the same covers all of the agreements between the

parties hereto and that there is no verbal contract of any kind in addition thereto, and that the sole and only services of the parties of the first part to be rendered to the party of the second part are contained in this contract.

JAMES E. ARNOLD.

Hale, Miss., April 11th, 1901.

Power of Attorney and Contract.

STATE OF MISS.,

County of Lauderdale:

Know all men by these presents, that I, Elizabeth Farve, of Hancock County, State of Miss., party of the first part, have this the 31 day of Dec., 1902, made and entered into the following contract and agreement with J. E. Arnold, of Ardmore, I. T., party of the second part, as follows: Witnesseth, that the party of the first part, representing her to be Choctaw Indian by blood, and claiming her right to her pro rata share of the Choctaw and Chickasaw lands in the Choctaw and Chickasaw Nations in the Indian Territory, and the pro rata share of any and all moneys due, or to become due to her by reason of being or becoming member of the said Choctaw and Chickasaw Nations, and being wholly without means to pay the expenses necessary in order to secure her rights and to remove to said Choctaw and Chickasaw Nations in the Indian Territory, and to secure her allotments of lands and pro rata shares of money due, and to become due, do by these presents agree and contract with the said party of the second part as follows:

In consideration of the sum of \$1.00 to me cash in hand paid, the receipt of which is hereby acknowledged, and for the services rendered and to be rendered by the said J. E. Arnold in selecting, securing, and locating her said pro rata share of lands and moneys due, or to become due in said nations, and the expenses incurred and to be incurred in carrying out this contract, agree to pay to the said J. E. Arnold, the said party of the second part, a sum of money equal to one-half of the value of all lands that may be allotted to her by the Commission to the Five Civilized Tribes, or any other proper authority in the allotment of said lands; also one-half of all moneys that may be due or become due by reason of her becoming a member of the Choctaw or Chickasaw Nation.

The value of the lands allotted or to be allotted to her will be fixed by the Commission to the Five Civilized Tribes, or the proper authority awarding or allotting the same, and if the Commission to the Five Civilized Tribes, or other proper authority, fail to place a value upon said lands to be so much per acre when the same is allotted, then the party of the first part and the party of the second part, or his agents, or his assigns or his heirs, shall agree as to the value of said lands; and in the case of a failure in the valuation of said lands, or agreement by the parties to this contract as to the value per acre of the land allotted then the party of the first part is to select one arbitrator, and the party of the second part is to

select one arbitrator, and these two arbitrators are to select a third arbitrator, who shall arbitrate and decide as to the value of said lands. And after the value of said lands is so fixed by the three arbitrators, then the party of the first part agree- to pay to the said party of the second part one-half interest in all of said lands, so allotted and awarded to the party of the first part. And it is further agreed and understood that in case the party of the first part should from any cause fail or refuse to execute said deed then the party of the second part is hereby empowered and authorized to take charge of said lands, to fence and improve said lands, and lease and rent the same for a period not to exceed 15 years, and to apply the rents and revenue from said allotted lands to the payment of this contract, after deducting from the said rents and revenues the costs of improvements made on said lands.

The said party of the first part hereby agree- and do by these presents give to the said party of the second part full and complete control of said lands for a period of not to exceed 15 years from the date of allotment.

It is further agreed and understood that in case the rents and revenues from said lands should pay before the expiration of the said 15 years a sum equal to one-half of the value of said lands, the lands to be valued as before mentioned, then the said party of the second part agrees in that event to give and put the said party of the first part back in possession of said lands to be allotted as aforesaid.

It is further understood and agreed by the parties to this agreement and contract that the party of the first part is to give to 357 the party of the second part one-half of all moneys that may be due or become due and payable by the United States and the Choctaw and Chickasaw Nations to the said party of the first part; and the said party of the first part hereby appoints and empowers the party of the second part to receive and receipt for any and all such moneys; and agrees further that if the parties paying out such moneys refuse or fail to accept this as authority for the party of the second part to receive such moneys, then the party of the first part will from time to time execute such powers of attorney and papers as may be deemed necessary by the said party of the second part, in order to enable said party of the second part to carry out the intent and purpose of this agreement; and further agrees that in the event the parties paying out the moneys aforesaid, fail to pay out said moneys to the said party of the second part upon this authority, or any other authority, then the party of the first part will receive said moneys, and in receiving such moneys, agrees to receive one-half of the total amount as the agent and bailee of the party of the second part, and to turn over to the said party of the second part, his agents, executors, administrators, heirs, or assigns, said one-half of moneys so received.

In witness whereof, the party of the first part has hereunto set her hand to this agreement on the 31 day of Dec., A. D. 1902.

ELIZABETH (her x mark) FARVE.

Witness:

GRACE MEADOWS.

W. J. TIPPIT.

March 20, 1903.

For value received I hereby assign to A. J. Waldock or order all my right, title, and interest in and to the within contract.

J. E. ARNOLD.

This agreement, made this 12 day of August, A. D. 1903, by and between Nancy Dixon, or Nancy Jackson, and her two minor children, Bissie and Patsy, of Neshoba County, Mississippi, party of the first part, and T. A. Bounds, of Wortham, Texas, party of the second part: Witnesseth, That whereas the party of the first part is a Choctaw Indian by blood, and a member of the Choctaw Tribe of Indians, and as such entitled to a prorata share with other members of the said tribe in the lands, payments, annuities, funds, and royalties of said Choctaw Tribe of Indians.

And whereas said party of the first part is wholly without means to move to the Indian Territory, as required by the law, and to pay the expenses in order to obtain and secure the allotments of lands and payments, annuities, rights, funds, and royalties, as provided by law.

Now, therefore, in consideration of the sum of one (\$1.00) dollar to the said party of the first part in hand paid, the receipt of which is hereby acknowledged, and in further consideration of the services heretofore rendered by ——— in securing the legislation establishing the rights of the first party as a member of said Choctaw Tribe of Indians, and in identifying and establishing the proof of her rights before the Commission to the Five Civilized Tribes, and for moneys expended incident thereto, and in further consideration of services rendered and to be rendered by said party
 358 of the second part in securing, selecting, and locating the prorata shares in said lands, and in obtaining and securing the annuities, payments, rights, funds, and royalties to which the said party of the first part is entitled, and in consideration of the removal of the party of the first part to the Indian Territory and the payment of all the necessary expenses incident thereto, including expense of building homes and other improvements, the said party of the first part hereby promises and agrees to pay to the said party of the second part, his successors and assigns, a sum of money equal to one-half ($\frac{1}{2}$) of the value of all lands so allotted or to be allotted to the said party of the first part, or any of them, by the Commission to the Five Civilized Tribes, or by the proper authority in the allotment of said lands, also one-half ($\frac{1}{2}$) of all timber on said lands, also one-half ($\frac{1}{2}$) of all moneys due or that may become due to said party of the first part or any of them by reason of the payments, annuities, rights, funds, and royalties coming to or belonging to the members of the Choctaw Tribe of Indians. The value of the land so allotted or to be allotted to the party of the first part, or any of them, shall be the market value thereof at the date of the patent or deed therefor to the said party of the first part, and the sum of money equal to one-half ($\frac{1}{2}$) of the value of the lands so allotted to said first party shall be due and payable, one-fourth ($\frac{1}{4}$)

thereof in one (1) year and three (3) months from the date of the patent or deed therefor, one-fourth ($\frac{1}{4}$) in three (3) years and three (3) months from said date, and the remaining one-half ($\frac{1}{2}$) in five (5) years and three (3) months from said date.

In case any difference of opinion shall arise by and between the parties hereto as to the market value of the lands so allotted or on the interpretation and carrying out of this agreement or any of its provisions, then, and in that event, such differences shall be determined by three arbitrators—each of the first and second parties hereto to appoint one arbitrator and the two so chosen to select a third arbitrator. The award of a majority of such arbitrators shall be binding and conclusive upon the parties hereto. The appointment of such arbitrators shall be made by either of the parties hereto within ten days after receiving notice from the other of said parties to make such appointment. The failure of either of the first or second parties hereto for ten days after such notice to appoint such arbitrator shall authorize the other of said parties to make an appointment for the one so in default. The two arbitrators chosen shall select a third arbitrator within five days after the appointment of the first two arbitrators. If the first arbitrators fail or are unable within the time hereinbefore specified to select a third arbitrator, then any judge of any court of record in Indian Territory upon application made by either of the first or second parties hereto for the purpose, is hereby authorized and empowered to appoint such third arbitrator. The award to be made by the arbitrators hereunder shall be made within fourteen (14) days of the date of the appointment of the third arbitrator.

Said party of the first part, for the consideration aforesaid, further promises and agrees upon the allotment of said lands to make, execute, and deliver to said party of the second part a lease, or leases of the lands so allotted for a period of five (5) years from the date of such allotment, and said party of the second part is

hereby authorized, empowered, and directed to enter upon
359 and take charge of said lands, and to fence, clear, improve, occupy, lease, and rent said lands or any part thereof for a period not to exceed five (5) years from the date of allotment, and to apply the rents, revenues, issues, and profits therefrom to the payments of the amounts due and to become due from the party of the first part to said party of the second part under this agreement.

It is further understood and agreed that said party of the first part shall have the right and option at any time before the final payment under the terms of this contract to convey one-half ($\frac{1}{2}$) of all lands so allotted to said party of the first part, in full payment and satisfaction of her agreement to pay said party of the second part one-half of the value hereof.

The said party of the first part hereby promises and agrees to give and does by these presents give to the said party of the second part the full and complete possession and control of said lands for a period not to exceed five (5) years from the date of said allotment, and the full right and power to clear and improve the same, and to cut and remove the timber and market the surplus thereof, if any,

and to mine and market coal and other mineral, and products of the soil, and to apply one-half ($\frac{1}{2}$) of the proceeds and avails thereof to payment of the amounts due and to become due from the party of the first part to the said party of the second part under this agreement, until the same shall be fully paid, the remaining half of said proceeds and avails being the property of the said party of the second part.

It is further understood and agreed by and between the parties hereto that for the consideration aforesaid the party of the first part promises and agrees to pay and give to the said party of the second part, as when received by said party of the first part, one-half ($\frac{1}{2}$) of all royalties, payments, funds, moneys, and annuities that may be due or become due and payable by the United States or by the Choctaw Nation to said party of the first part.

Said party of the first part further promises and agrees from time to time to make, execute, and deliver such leases, powers of attorney, and other instruments in writing as may be deemed necessary by the said party of the second part in order to carry out the spirit and intent of this contract.

In witness whereof, the party of the first part has hereunto set her hand and seal this 12 day of August, A. D. 1903.

NANCY (her x mark) DIXON.

J. F. DUNCAN.

WATSON (hix x mark) MORRIS.

Department of the Interior—Commission to the Five Civilized Tribes.

Power of Attorney.

Know all men by these presents, That Willie Wilson, of Tolles, Mississippi, has made, constituted, and appointed, and by these presents does make, constitute, and appoint W. N. Vernon, of Kiowa, Indian Territory, his true and lawful attorneys for him and in his name, place, and stead, to make application to the Commission of the Five Civilized Tribes for allotment of lands in the Choctaw and Chickasaw Nation to himself and minor children, viz: John

360 Wesley Wilson and Donald Wilson, all of whom are citizens of said nation, giving and granting unto his said attorney full power and authority to do and perform all and every act and thing whatsoever, requisite and necessary to be done in selecting, designating, and obtaining said allotment, as fully to all intents and purposes as he might or could do, if personally present; hereby ratifying and confirming all that his said attorney shall lawfully do or cause to be done, by virtue hereof.

In witness whereof, he has hereunto set his hand this 22d day of December, A. D. 1902.

Witnesses:

L. P. HUDSON.
TOM TAFFY.

WILLIE WILSON.

UNITED STATES OF AMERICA,

State of Mississippi, Lauderdale County, ss:

Be it remembered, that on this day personally appeared before me, Willie Wilson, to me personally known to be the person who executed the foregoing power of attorney, and being by me examined, separately and apart from his said attorney, W. N. Vernon, stated and acknowledged that he had executed said instrument as his free and voluntary act and deed, without compulsion or undue influence, and for the purpose therein mentioned and set forth.

In testimony whereof, I have hereunto set my hand and affixed my notarial seal this 22d day of December, A. D. 1902.

[SEAL.]

R. F. COCHRAN,
Notary Public.

This agreement, made this 22d day of December, A. D. 1902, by and between Willie Wilson and children, John Wesley (4), Donald Wilson (2), of Tolles, Kemper County, Mississippi, party of the first part, and W. N. Vernon, party of the second part: Witnesseth, that whereas the party of the first part, a Choctaw Indian by blood, and a member of the Choctaw Tribe of Indians, and as such entitled to a pro rata share with other members of the said tribe in the lands, payments, annuities, funds, and royalties of said Choctaw tribe of Indians;

And whereas said party of the first part wholly without means to move to the Indian Territory as required by the law, and to pay the expenses in order to obtain and secure the allotments of lands and payments, annuities, rights, funds, and royalties, as provided by law,

Now, therefore, in consideration of the sum of one (\$1.00) dollar to the said party of the first part in hand paid, the receipt of which is hereby acknowledged, and in further consideration of the services heretofore rendered by W. N. Vernon, in securing the legislation establishing the rights of the first party as member of said Choctaw Tribe of Indians, and in identifying and establishing the proof of his rights before the Commission to the Five Civilized Tribes, and for moneys expended incident thereto, and in further consideration of services rendered and to be rendered by said party of the second part in securing, selecting, and locating the pro rata shares in said lands, and in obtaining and securing the annuities, payments, rights, funds, and royalties to which the said party of the first part is entitled, and in consideration of the removal of the party of the first part to the Indian Territory and the payment of all the necessary expenses incident thereto, including expense of building
361 homes and other improvements, the said party of the first part hereby promise and agree to pay to the said party of the second part, its successors and assigns a sum of money equal to one-half ($\frac{1}{2}$) of the value of all lands so allotted or to be allotted to the said party of the first part or any of them, by the Commission to the Five Civilized Tribes, or by the proper authority in the allotment of said lands, also one-half ($\frac{1}{2}$) of all timber on said lands,

also one-half ($\frac{1}{2}$) of all moneys due or that may become due to said party of the first part or any of them by reason of the payments, annuities, rights, funds, and royalties coming to or belonging to the members of the Choctaw Tribe of Indians. The value of the land so allotted or to be allotted to the party of the first part, or any of them, shall be the market value thereof at the date of the patent or deed therefor to the said party of the first part, and the sum of money equal to one-half ($\frac{1}{2}$) of the value of the lands so allotted to said first party, shall be due and payable, one-fourth ($\frac{1}{4}$) thereof in one (1) year and three (3) months from the date of the patent or deed therefor, one-fourth ($\frac{1}{4}$) in three (3) years and three (3) months from said date, and the remaining one-half ($\frac{1}{2}$) in five (5) years and three (3) months from said date.

In case any difference of opinion shall arise by and between the parties hereto as to the market value of the lands so allotted, or on the interpretation and carrying out of this agreement or any of its provisions, then, and in that event, such differences shall be determined by three arbitrators—each of the first and second parties hereto to appoint one arbitrator and the two so chosen to select a third arbitrator. The award of a majority of such arbitrators shall be binding and conclusive upon the parties hereto. The appointment of such arbitrators shall be made by either of the parties hereto within ten days after receiving notice from the other of said parties to make such appointment. The failure of either of the first or second parties hereto for ten days after such notice to appoint such arbitrator shall authorize the other of said parties to make an appointment for the one so in default. The two arbitrators chosen shall select a third arbitrator within five days after the appointment of the first two arbitrators. If the first arbitrators fail or are unable within the time hereinbefore specified to select a third arbitrator, then any judge of any court of record in Indian Territory, upon application made by either of the first or second parties hereto for the purpose, is hereby authorized and empowered to appoint such third arbitrator. The award to be made by the arbitrators hereunder shall be made within fourteen (14) days of the date of the appointment of the third arbitrator.

Said party of the first part, for the consideration aforesaid, further promise- and agree- upon the allotment of said lands to make, execute, and deliver to said party of the second part a lease or leases of the lands so allotted for a period of five (5) years from the date of such allotment, and said party of the second part is hereby authorized, empowered, and directed to enter upon and take charge of said lands, and to fence, clear, improve, occupy, lease, and rent said lands or any part thereof for a period not to exceed five (5) years from the date of allotment, and to apply the rents, revenues, issues, and profits therefrom to the payments of the amounts due and to become due

362 from the party of the first part to said party of the second part, under this agreement.

It is further understood and agreed that said party of the first part shall have the right and option at any time before the final payment under the terms of this contract to convey one-half ($\frac{1}{2}$) of all lands

so allotted to said party of the first part, in full payment and satisfaction of his agreement to pay to said party of the second part one-half of the value thereof.

The said party of the first part hereby promises and agrees to give and does by these presents give to the said party of the second part the full and complete possession and control of said lands for a period not to exceed five (5) years from the date of said allotment, and the full right and power to clear and improve the same, and to cut and remove the timber and market the surplus thereof, if any, and to mine and market coal and other minerals, and products of the soil, and to apply one-half ($\frac{1}{2}$) of the proceeds and avails thereof to payment of the amounts due and to become due from the party of the first part to the said party of the second part under this agreement, until the same shall be fully paid, the remaining half of said proceeds and avails being the property of the said party of the second part.

It is further understood and agreed by and between the parties hereto that for the consideration aforesaid the party of the first part promises and agrees to pay and give to the said party of the second part, as when received by said party of the first part, one-half ($\frac{1}{2}$) of all royalties, payments, funds, moneys, and annuities that may be due or become due and payable by the United States or by the Choctaw Nation to said party of the first part.

Said party of the first part further promises and agrees from time to time to make, execute, and deliver such leases, powers of attorney, and other instruments in writing as may be deemed necessary by the said party of the second part in order to carry out this spirit and intent of this contract.

In witness whereof the party of the first part have hereunto set their hands and seals this 22d day of December, A. D. 1902.

WILLIE WILSON.

Witness:

J. WALKER.
TOM TUFFY.

This agreement, made this — day of —, A. D. 19—, by and between Martha Warter and child, Robert Warter, of Neshoba County, Mississippi, parties of the first part, and J. W. Gillett, party of the second part, witnesseth:

That whereas the parties of the first part, Choctaw Indians by blood, and members of the Choctaw Tribe of Indians, and as such entitled to a pro rata share with other members of the said tribe in the lands, payments, annuities, funds, and royalties of said Choctaw Tribe of Indians;

And whereas said parties of the first part are wholly without means to move to the Indian Territory as required by the law, and to pay the expenses in order to obtain and secure the allotments of lands and payments, annuities, rights, funds, and royalties, as provided by law:

Now, therefore, in consideration of the sum of one (\$1.00) dollar to the said parties of the first part in hand paid, the receipt of which is hereby acknowledged, and in further consideration of the services heretofore rendered by J. W. Gillett in securing

the legislation establishing the rights of the first parties as members of said Choctaw Tribe of Indians, and in identifying and establishing the proof of their rights before the Commission to the Five Civilized Tribes, and for moneys expended incident thereto, and in further consideration of services rendered and to be rendered by said party of the second part in securing, selecting, and locating the pro rata shares in said lands, and in obtaining and securing the annuities, payments, rights, funds, and royalties to which the said parties of the first part are entitled, and in consideration of the removal of the parties of the first part to the Indian Territory and the payment of all the necessary expenses incident thereto, including expense of building homes and other improvements, the said parties of the first part hereby promise and agree to pay to the said party of the second part, its successors and assigns, a sum of money equal to one-half ($\frac{1}{2}$) of the value of all lands so allotted or to be allotted to the said parties of the first part, or any of them, by the Commission to the Five Civilized Tribes, or by the proper authority in the allotment of said lands, also one-half ($\frac{1}{2}$) of all timber on said lands, also one-half ($\frac{1}{2}$) of all moneys due or that may become due to said parties of the first part, or any of them, by reason of the payments, annuities, rights, funds, and royalties coming to or belonging to the members of the Choctaw Tribe of Indians. The value of the land so allotted or to be allotted to the parties of the first part, or any of them, shall be the market value thereof at the date of the patent or deed therefor to the said parties of the first part, and the sum of money equal to one-half ($\frac{1}{2}$) of the value of the lands so allotted to said first parties shall be due and payable, one-fourth ($\frac{1}{4}$) thereof in one (1) year and three (3) months from the date of the patent or deed therefor, one-fourth ($\frac{1}{4}$) in three (3) years and three (3) months from said date, and the remaining one-half ($\frac{1}{2}$) in five (5) years and three (3) months from said date.

In case any difference of opinion shall arise by and between the parties hereto, as to the market value of the lands so allotted or on the interpretation and carrying out of this agreement or any of its provisions, then, and in that event, such differences shall be determined by three arbitrators—each of the first and second parties hereto to appoint one arbitrator and the two so chosen to select a third arbitrator. The award of a majority of such arbitrators shall be binding and conclusive upon the parties hereto. The appointment of such arbitrators shall be made by either of the parties hereto within ten days after receiving notice from the other of said parties to make such appointment. The failure of either of the first or second parties hereto for ten days after such notice to appoint such arbitrator shall authorize the other of said parties to make an appointment for the one so in default. The two arbitrators chosen shall select a third arbitrator within five days after the appointment of the first two arbitrators. If the first arbitrators fail or are unable within the time hereinbefore specified to select a third arbitrator, then any judge of any court of record in Indian Territory upon application made by either of the first or second parties hereto for the purpose, is hereby authorized and empowered to appoint such

364 third arbitrator. The award to be made by the arbitrators hereunder shall be made within fourteen (14) days of the date of the appointment of the third arbitrator.

Said parties of the first part, for the consideration aforesaid, farther promise and agree upon the allotment of said lands to make, execute, and deliver to said party of the second part a lease or leases of the lands so allotted for a period of five (5) years from the date of such allotment, and said party of the second part is hereby authorized, empowered, and directed to enter upon and take charge of said lands, and to fence, clear, improve, occupy, lease, and rent said lands or any part thereof for a period not to exceed five (5) years from the date of allotment, and to apply the rents, revenues, issues, and profits therefrom to the payments of the amounts due and to become due from the parties of the first part to said party of the second party, under this agreement.

It is further understood and agreed that said parties of the first part shall have the right and option at any time before the final payment under the terms of this contract to convey one-half ($\frac{1}{2}$) of all lands so allotted to said parties of the first part, in full payment and satisfaction of her agreement to pay to said party of the second part one-half of the value thereof.

The said parties of the first part hereby promise and agree to give and do by these presents give to the said party of the second part the full and complete possession and control of said lands for a period not to exceed five (5) years from the date of said allotment, and the full right and power to clear and improve the same, and to cut and remove the timber and market the surplus thereof, if any, and to mine and market coal and other minerals, and products of the soil, and to apply one-half ($\frac{1}{2}$) of the proceeds and avails thereof to payment of the amounts due and to become due from the parties of the first part to the said party of the second part under this agreement, until the same shall be fully paid, the remaining half of said proceeds and avails being the property of the said party of the second part.

It is further understood and agreed by and between the parties hereto that for the consideration aforesaid the parties of the first part promise and agree to pay and give to the said party of the second part, as when received by said parties of the first part, one-half ($\frac{1}{2}$) of all royalties, payments, funds, moneys, and annuities that may be due or become due and payable by the United States or by the Choctaw Nation to said parties of the first part.

Said parties of the first part further promise and agree from time to time to make, execute, and deliver such leases, powers of attorney, and other instruments in writing as may be deemed necessary by the said party of the second part in order to carry out this spirit and intent of this contract.

In witness whereof the parties of the first part have hereunto set their hands and seals this 8th day of May, A. D. 1903.

MARTHA (her x mark) WARTER.

Witnesses to mark:

L. D. HUDSON,

L. P. HUDSON.

365 STATE OF MISSISSIPPI,
County of Hinds:

Know all men by these presents that I, Henry Robertson, of the County of Hinds, State of Mississippi, have made, constituted, and appointed, and by these presents does make and appoint, J. J. Beckham and R. J. Ellington, of Mexia, Texas, his true and lawful attorney for him and in his name, place, and stead, to make application to the Commission of the Five Civilized Tribes for allotments of lands in the Choctaw and Chickasaw Nations to himself and minor children, hereby revoking all former power of attorney, to-wit: Mary Robertson & Eula Robertson, all of whom are citizens of said nation, giving and granting unto his said attorney, full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in selecting, designating, and obtaining said allotment as fully to all intents and purposes as he might or could do if personally present, hereby ratifying and confirming all that his said attorneys shall lawfully do or cause to be done by virtue hereof.

In witness hereof he has hereunto set his hand this the 3d day of Sept., A. D. 1901.

HENRY ROBERTSON.

THE STATE OF MISSISSIPPI,
County of Hinds:

Know all men by these presents that I, Henry Robertson, for myself and wife, Mary Robertson, and Alice Robertson, about 8 year old, Eula Robertson, about 5 years, my children, of the county of Hinds, State of Mississippi, parties of the first part, have this 3d day of Sept., 1901, made and entered into the following contract and agreement with J. J. Beckham and R. J. Ellington, of Mexia, Texas, parties of the second part, as follows:

Witnesseth, that the parties of the first part, representing themselves to be Choctaw Indians by blood and claiming their rights of their pro rata share of Choctaw lands, annuities, and royalties in the Choctaw Nation, Indian Territory, as members of said tribe and being wholly without means to pay expenses necessary in order to secure their rights and to remove to said Choctaw Nation, Indian Territory, and to secure our allotments of lands, annuities, and royalties, do by these presents agree and contract with said parties of the second part as follows:

In consideration of the sum of one dollar (\$1.00) to me in hand paid, the receipt of which is hereby acknowledged, and for the services rendered and to be rendered by the said J. J. Beckham and R. J. Ellington in securing and locating our said pro rata shares of said lands, annuities, and royalties in said Choctaw Nation, Indian Territory, I agree to pay to the said J. J. Beckham and R. J. Ellington, parties of the second part, a sum of money equal to one-half of the value of all lands allotted to us by the Dawes Commission, Curtis Act, or the proper authority in the allotment of said lands, also one-

half of all the moneys that may be due us by reason of said annuities and royalties coming from the said Choctaw Nation.

The value of these lands so allotted to us will be fixed by said Dawes Commission or proper authority awarding or allotting the same. And if the said Dawes Commission or proper authority
356 should fail to value said lands to be so much per acre when they allot the same, then the said party of the first part, and the parties of the second part, their agents or assigns, or their heirs, shall agree to the value of said lands, and in case of failure of said valuation or agreement by the parties of this contract as to the value per acre of said land allotted, then the parties of the first part are to select one arbitrator and the parties of the second part are to select one arbitrator, and these two arbitrators are to select a third, who shall arbitrate and decide value of lands, and after the value of said lands is so fixed by said three arbitrators, then parties of the first part agrees to deed to said parties of the second part one-half interest in all of said lands so allotted and awarded to the parties of the second part.

And it is further agreed and understood that in case the parties of the first part should from any cause fail or refuse to execute said deed, then the parties of the second part is hereby authorized and empowered to take charge of all said lands, to fence, and improve, and lease, or rent it for a period not less than twenty years, and to apply the rents and revenues from said allotted lands to the payment of this contract.

The parties of the first part hereby agree, and do by these presents give to the said parties of the second part the full and absolute control of said lands for a period not to exceed twenty years from date of allotment. It is further agreed and understood the rents and revenues from said lands should pay before the expiration of twenty years a sum equal to one-half the value of all of said lands besides expenses, then the parties of the second part agree in that event to give and put the parties of the first part back in possession of said lands to be so allotted as aforesaid. It is further agreed and understood by the parties to this agreement and contract that the parties of the first part agree to give to the parties of the second part one-half of all royalties and annuities that may be due and payable by the United States or the Choctaw Nation or Chickasaw Nation to the parties of the first part. And parties of the first part agree and hereby bind themselves to from time to time execute such papers and power of attorney as may be deemed necessary by parties of the second part in order to enable said parties of the second part to carry out the intent and agreement of this contract, hereby confirming all acts of the party of the second part.

In witness whereof the parties of the first part have hereunto set their hands to this agreement and contract.

This the 3d day of Sept., 1901.

HENRY ROBERTSON.

This agreement, made this 12th day of December, A. D. 1902, by and between Sidney John, Bettie Jean (children), Cora Jakeaway,

Efa John, Ella John, of Leake County, Mississippi, parties of the first part, and J. J. Beckham and R. J. Ellington, parties of the second part: Witnesseth, that whereas, the party of the first part, Sidne John, Choctaw Indian, is by blood and is a member of the Choctaw Tribe of Indians, and as such entitled to a pro rata share with other members of the said tribe in the lands, payments, annuities, funds, and royalties of said Choctaw Tribe of Indians,

367 And whereas, said party of the first part is wholly without means to move to the Indian Territory as required by the law, and to pay the expenses in order to obtain and secure the allotments of lands and payments, annuities, rights, funds, and royalties, as provided by law.

Now, therefore, in consideration of the sum of one (\$1.00) dollar to the said party of the first part in hand paid, the receipt of which is hereby acknowledged, and in further consideration of the services heretofore rendered by J. J. Beckham and R. J. Ellington in securing the legislation establishing the rights of the first party as member of said Choctaw Tribe of Indians, and in identifying and establishing the proof of his rights before the Commission to the Five Civilized Tribes, and for moneys expended incident thereto, and in further consideration of services rendered and to be rendered by said parties of the second part in securing, selecting, and locating the pro rata shares in said lands, and in obtaining and securing the annuities, payments, rights, funds, and royalties to which the said party of the first part is entitled, and in consideration of the removal of the party of the first part to the Indian Territory and the payment of all the necessary expenses incident thereto, including expenses of building homes and other improvements, the said party of the first part hereby promises and agrees to pay to the said parties of the second part, their successors and assigns, a sum of money equal to one-half ($\frac{1}{2}$) of the value of all lands so allotted or to be allotted to the said party of the first part, or any of them, by the Commissioners to the Five Civilized Tribes, or by the proper authority in the allotment of said lands, also one-half ($\frac{1}{2}$) of all timber on said lands, also one-half ($\frac{1}{2}$) of all money due or that may become due to said party of the first part or any of them by reason of the payments, annuities, rights, funds, and royalties coming to or belonging to the members of the Choctaw Tribe of Indians. The value of the land so allotted or to be allotted to the party of the first part, or any of them, shall be the market value thereof at the date of the patent or deed therefor to the said party of the first part, and the sum of money equal to one-half ($\frac{1}{2}$) of the value of the lands so allotted to said first party, shall be due and payable, one-fourth ($\frac{1}{4}$) thereof in one (1) year and three (3) months from the date of the patent or deed therefor, one-fourth ($\frac{1}{4}$) in three (3) years and three (3) months from said date, and the remaining one-half ($\frac{1}{2}$) in five (5) years and three (3) months from said date.

In case any difference of opinion shall arise by and between the parties hereto as to the market value of the lands so allotted or on the interpretation and carrying out of this agreement or any of its provisions, then, and in that event, such differences shall be

determined by three arbitrators, each of the first and second parties hereto to appoint one arbitrator and the two so chosen to select a third arbitrator. The award of a majority of such arbitrators shall be binding and conclusive upon the parties hereto. The appointment of such arbitrators shall be made by either of the parties hereto within ten days after receiving notice from the other of said parties to make such appointment. The failure of either of the first or second parties hereto for ten days after such notice to appoint such arbitrator shall authorize the other of said parties to make an appointment for the one so in default. The two arbitrators chosen shall select a third arbitrator within five days after the appointment of the first two arbitrators. If the first arbitrators fail or are unable within the time hereinbefore specified to select

368 a third arbitrator, then any judge of any court of record in Indian Territory, upon application made by either of the first or second parties hereto for the purpose, is hereby authorized and empowered to appoint such third arbitrator. The award to be made by the arbitrators hereunder shall be made within fourteen (14) days of the date of the appointment of the third arbitrator.

Said party of the first part, for the consideration aforesaid, further promises and agrees upon the allotment of said lands to make, execute, and deliver to said parties of the second part a lease or leases of the lands so allotted for a period of five (5) years from the date of such allotment, and said party of the second part is hereby authorized, empowered, and directed to enter upon and take charge of said lands, and to fence, clear, improve, occupy, lease, and rent said lands or any part thereof for a period not to exceed five (5) years from the date of allotment, and to apply the rents, revenues, issues, and profits therefrom to the payments of the amounts due and to become due from the party of the first part to said parties of the second part, under this agreement.

It is further understood and agreed that said party of the first part shall have the right and option at any time before the final payment under the terms of this contract to convey one-half ($\frac{1}{2}$) of all lands so allotted to said party of the first part, in full payment and satisfaction of his agreement to pay to said parties of the second part one-half of the value thereof.

The said party of the first part hereby promises and agrees to give and does by these presents give to the said parties of the second part the full and complete possession and control of said lands for a period not to exceed five (5) years from the date of said allotment, and the full right and power to clear and improve the same, and to cut and remove the timber and market the surplus thereof, if any, and to mine and market coal and other minerals and products of the soil, and to apply one-half ($\frac{1}{2}$) of the proceeds and avails thereof to payment of the amounts due and to become due from the party of the first part to the said parties of the second part under this agreement, until the same shall be fully paid, the remaining half of said proceeds and avails being the property of the said party of the second part.

It is further understood and agreed by and between the parties

hereto that for the consideration aforesaid the party of the first part promises and agrees to pay and give to the said party of the second part, as when received by said party of the first part, one-half ($\frac{1}{2}$) of all royalties, payments, funds, moneys, and annuities that may be due or become due and payable by the United States or by the Choctaw Nation to said party of the first part.

Said party of the first part further promises and agrees from time to time to make, execute, and deliver such leases, powers of attorney, and other instruments in writing as may be deemed necessary by the said party of the second part in order to carry out this spirit and intent of this contract.

In witness whereof, the parties of the first part have hereunto set their hands and seals this 12th day of December, A. D. 1902.

SIDNEY (his x mark) JOHN,
BETTIE (her x mark) JOHN,
Per JOHN.

J. A. FRANKS.
C. M. FRANKS.
WILLIAM MYERS.

300 Memorandum of agreement between the following persons, Choctaw Indians and known as Mississippi Choctaws, being United States citizens, and wives and children of such Choctaw Indians, the said children acting through their guardian, as follows: Robt. Willis, parties of the first part, and W. H. Gallaspy, attorney and counselor at law of the town of Hickory and State of Mississippi, party of the second part.

The said parties of the first part have retained and employed, and do hereby retain and employ, the party of the second part as their attorney to look out for, protect, defend, and secure their interest in the lands in the Indian Territory to which they are or may be entitled as Mississippi Choctaws or as members of the Choctaw Nation, and to procure the recognition of their rights as such Mississippi Choctaws and as members of the Choctaw Nation in said lands and in and to any funds which have heretofore arisen or may hereafter arise from the Choctaw-Chickasaw lands.

It is contemplated and understood that the said party of the second part shall and may associate with himself such other attorneys and counselors at law, and other persons and assign such rights hereunder as he may deem necessary to enable him to perform, or secure the performance of the duties and obligations assumed by him in accepting such retainer and employment. This agreement is made for the benefit of such persons and others aforesaid as may be associated with the said W. H. Gallaspy as well as himself.

It is agreed that the said W. H. Gallaspy shall receive as compensation for the services of himself and his associates as aforesaid to be rendered in and about such employment and retainer, a sum of money equal to one-half ($\frac{1}{2}$) of the value of the net recovery of or for the parties of the first part in land and money or money values, as Mississippi Choctaws or as citizens of the Choctaw Nation, estimat-

ing the land at its true and actual value at the time that such compensation becomes due and payable; said compensation to be due and payable as follows, namely: One-third ($\frac{1}{3}$) thereof to accrue and be due one year and one day from the date of the patents issued to the parties of the first part, one-third ($\frac{1}{3}$) thereof to accrue and be due three years and one day from the date of said patent, and one-third ($\frac{1}{3}$) thereof to accrue and be due five years and one day from the date of said patent.

The parties of the first part hereby authorize and empower the said party of the second part to rent and lease the said lands, in his discretion, and in the interest of the parties of the first part, and to collect and receive the rents and income coming therefrom.

The parties of the first part also authorize and empower said party of the second part to locate and select the lands to be allotted to the parties of the first part, including a homestead of 160 acres of land, in his discretion, so as to secure the just rights of the parties of the first part.

The parties of the first part also authorize and empower the party of the second part, as their agent, to advertise and invite buyers by the usual methods, and to sell and convey such lands at not less than the value appraised by the U. S. Commission to the Five Civilized

370 Tribes, and to give good and sufficient deeds and assurances of title therefor whenever the same may be lawfully sold, and to collect and receive the purchase price therefor, and to give proper receipts, releases, and acquittances thereof; but this is not to include the homestead of one hundred and sixty acres. The moneys so collected and received, as aforesaid, by the party of the second part shall be applied:

1st. To the payment of the amount which the party of the second part is to receive under and by virtue of the terms of this agreement for his expenses and services and the expenses and services of his said associates or assigns.

2. To pay the balance thereof to the parties of the first part.

It is also agreed that the actual expenses and disbursements connected with such employment, or incurred in protecting the rights of the said parties of the first part shall be first paid out of any recovery to be had herein, and the party of the second part is authorized to make such payments or to reimburse himself therefor out of any moneys coming into his hands by virtue of the provisions of this agreement before dividing said moneys as hereinbefore provided.

It is contemplated that the expense of the removal of said Mississippi Choctaws from their present places of residence to the said Choctaw Nation may be a part of the expenses connected with such employment and the protection of such rights.

The party of the second part is authorized to make and incur such expenses and disbursements in connection with the premises, the same to be repaid as hereinbefore provided.

The parties of the first part agree to do anything that may be necessary for them to do or required of them in connection with the premises, including the signing and execution of such papers or docu-

ments that may be necessary or proper in accordance with the rules and regulations of the public officials having the matter in charge.

This contract is in place of any and all previous contracts in regard to the securing of the right of the parties of the first part to lands and money values due them as members and citizens of the Choctaw Nation in Indian Territory.

The parties of the first part further agree that the terms and stipulations of this contract shall be binding on heirs, executors, and assigns, and that ——— is hereby appointed executor of the parties of the first part, and is instructed faithfully to carry out the terms of this contract.

In witness whereof we hereunto attach our hands and seals on this the 7th day of Oct., 1902, in the State of Mississippi.

Parties of the first part:

ROBT. (his x mark) WILLIS.

Witnesses:

G. W. TODD, JR.

W. H. GALLASPY.

(Memorandum of Agreement.)

This contract witnesses that whereas Charles F. Winton and Robert L. Owen had certain contracts with various individual Mississippi Choctaws for services rendered to them from 1896 to date, in 371 procuring for them the rights of citizenship in the Choctaw Nation; and whereas, through the efforts of the said parties and their associates, said Indians have received citizenship and property rights estimated at \$3,000 in value in said Choctaw Nation, where they have complied with the conditions imposed by law; and whereas the said Owen and Winton have received no compensation whatever for their time, services, and expenses in connection therewith, and it is now proposed to ask Congress to permit a suit to be brought in the Court of Claims to fix the fees of the said Winton, Owen, and their associates; and whereas bills have been introduced in the House of Representatives and the Senate providing for this privilege: Now, therefore, the said R. L. Owen, acting on his own behalf and on behalf of the said Winton, hereby engages the services of John Boyd, Esq., to assist in procuring the legislation aforesaid, and pledges to him, contingent upon such legislation being obtained at this Congress, an interest of \$50,000 in said contracts, agreeing to pay him his proportionate part out of any allowances made by the court to said attorneys in proportion as the above sum bears to the total amounts pledged to the said Winton and Owen on the said estates, estimated at the value set forth in this contract, immediately upon the recovery by them of such moneys so awarded.

Witness our hands on this 17th day of February, 1906, at Washington, D. C.

RO. L. OWEN.
JOHN BOYD.

Memorial of the Mississippi Choctaws.

December, 1896.

To the Senate and House of Representatives of the United States in Congress assembled:

Your petitioners are full-blood Choctaws, speaking the Choctaw language. They live in Mississippi, near Newton, under the authority of the treaty which provided (U. S. Stats., 7, 335, Art. XIV) that we might become citizens of Mississippi, have reservations, sell the reservations, and still "not lose the privileges of a Choctaw citizen."

These privileges we now humbly but earnestly ask to be provided for, in view of the proposed distribution of the Choctaw estate, and that we shall (to use the words relating to us of the treaty of 1866, Revised Treaties, pp. 293, article 13) "have opportunity to exercise the rights hereby given to resident Choctaws and Chickasaws."

We are comparatively few in number, but our rights have been repeatedly and fully recognized by our western brothers, as, on December 24, 1889, the Choctaw National Council memorialized Congress (copy herewith) asking the United States to make provision for us to move to the Choctaw Nation, using the language that there were numbers of "Choctaws yet in the States of Mississippi and Louisiana who are entitled to all of the rights and privileges of citizenship in the Choctaw Nation."

This acknowledgment and voluntary declaration of the Choctaw Nation makes argument needless.

372 We have the same rights as other Choctaws, and we respectfully ask that we be provided for either by an enrollment by the U. S. Commission to the Five Civilized Tribes or by a special agent, under the direction of the Commissioner of Indian Affairs.

Your humble servants,

JACK AMOS,
SAM LEWIS,
JOHN JASPER,
CAPTAIN BILLY,
ISAAC POSTOAK,
ERBIE POTUBBIE,
JIM TOOKALOO,
H. P. CHUBBEE,
BEN GIBSON, etc.,

By C. F. WINTON.

Memorial of Mississippi Choctaws.

January, 1897.

To the Senate and House of Representatives of the United States in Congress assembled:

Your petitioners are full-blood Choctaws, entitled, under the treaties, to an equal right in the land of the Choctaws about to be allotted in Indian Territory.

We ask to be enrolled so as to partake of our part in the estate now about to be dispersed.

The act of Congress of May 28, 1830 (U. S. Stat. 412, sec. 3), which provided for an exchange of land west of the Mississippi for those east of the Mississippi, contained a general proviso, as follows: "Provided always, That such lands shall revert to the United States if the Indians become extinct or abandon the same."

The following September of 1830 the treaty was made by the Choctaws—that is, by us, and by those of whom we are the children and the grandchildren, as well as by our brothers, cousins, and immediate blood kin of the Indian Territory.

This treaty of 1830, which we made, conveyed our homes and all our lands in Mississippi to the United States in consideration, partly, as follows:

"The United States, under a grant specially to be made by the President of the United States, shall cause to be conveyed to the Choctaw Nation a tract of country west of the Mississippi River, in fee simple, to them and their descendants, to inure to them while they shall exist as a nation and live on it."

This grant was manifestly intended to convey to the Choctaws and their descendants a fee-simple title, and was so patented by President Tyler, March 23, 1842.

The condition of the act of 1830 was put in nearly all the Indian treaties of this period, because it was anticipated that some of the Indian communities assigned land would become extinct or abandon the land, and it was put in this treaty as above shown, although this country had been ceded to the Choctaws October 18, 1820 (U. S. Stat. 7, 211, art. 2).

The condition of escheat that the land should revert to the United States if the Indians became extinct or abandoned the land, put into the treaty and patent by the United States for the plain purpose of declaring an escheat, has been strangely turned from its manifest purpose. It is suggested now that the meaning of this conveyance "in fee simple" to the Choctaws "and their descendants" "while they shall exist as a nation and live on it" was to deprive any individual Choctaw of his right as a Choctaw unless he lived on it; that every absentee Choctaw should be disinherited under the authority of this provision. It is true that such a view, if made effective, will take away our expected inheritance and bestow it on our kinsmen, and make their share a trifle larger by taking all of our share from us; but such a view is palpably erroneous, as well as destructive to us.

It is plainly a forced construction of the treaty condition, "while they shall exist as a nation and live on it." This condition was not imposed by the Choctaw Nation to keep its citizens at home or to disinherit the absentee, or for the benefit of those not absent, or for any purpose of domestic regulation, all of which belonged, by treaty, to the Choctaw Nation.

This condition was not imposed by the Choctaws or by the Choctaw Nation at all, nor were they consulted by the United States as to this condition. This condition was imposed by Congress, May 28,

1830, prior to the Choctaw treaty of September, 1830. This act of Congress applied to all Indians, and was intended alone to declare the right of escheat if the tribes assigned western land, or any of them should cease to exist as a nation or as a nation abandon the land. Such contingencies were wisely provided for, but Congress had no reference to, or intention of, directing the internal economy of the Cherokees, Creeks, Choctaws, etc., to whom this condition of escheat was made to apply. Indeed, Congress had expressly recognized these Indians as in exclusive control of their own domestic affairs, except where modified by express treaty provisions.

The Choctaws did not impose this condition to limit the number of distributees of this estate and thus make each beneficiary's part the larger. No such construction was thought of. The Choctaws put no condition to their own title. The United States placed the condition on the Choctaw title in the interest of the United States alone, as directed by the act of Congress passed four months before. The plain purpose of Congress was to declare the application of the principle of escheat if the Indians became extinct or as communities abandoned the grant.

Another very important consideration urging us to make the treaty of 1830 was the 14th article, which makes any misunderstanding of the treaty impossible, and shows plainly that such of our citizens who kept a reservation should be allowed to become citizens of Mississippi without losing the privilege of a Choctaw citizen. Many of our people have taken advantage of this right and alternately lived out West with our kin, and back in Mississippi with our old associations, with no thought of being disinherited because of our exercising the treaty right given by Art. 14.

Article 14 (U. S. Stat. 7, 335) provides that every Choctaw desirous of remaining in Mississippi and becoming a citizen of the State should be permitted to do so, and have a special reservation in fee simple, and says in plain terms that "Persons who claim under this article shall not lose the privilege of a Choctaw citizen," but provides, "if they ever remove, are not to be entitled to any portion of the Choctaw annuity."

Those Choctaws who got reservations in Mississippi were not to lose the privilege of a Choctaw citizen except their interest in
374 the Choctaw annuity as an offset to the reservations granted them, which was an equitable and reasonable arrangement.

We have not lost the privilege of a Choctaw citizen. It was expressly agreed by us, and by the United States, and by the other Choctaws that we should not lose the privilege of a Choctaw citizen, except the annuity, by taking reservations, becoming citizens of Mississippi, and living there. (U. S. Stat. 7, 335, Art. XIV.)

We were necessary to the making of this treaty. We joined in the conveyance of the United States and we are grantors and grantees of this treaty, and justly entitled by treaty and in good conscience to our part of the considerations pledged our people for the grant we made.

The treaty of 1830 was signed by 173 Choctaws, who were simply

the leading men of the various towns, the Choctaws having then no organized constitutional government.

They adopted their present constitution only on January 11, 1860.

Your petitioners were as much the grantors of the Mississippi lands as any other Choctaws, and as much entitled to the benefits. We expressly reserved the right to stay in Mississippi if we wanted to, and that we should not lose by this act the privilege of a Choctaw citizen. This provision of the treaty is in full force and has never been modified, and could not be without our consent.

On June 22, 1855, the treaty (Rev. Tr. 276, Art. I) declares that "pursuant to an act of Congress approved May 28, 1830, the United States do hereby forever secure and guarantee the lands embraced within the said limits to the Choctaw and Chickasaw tribes, their heirs and successors, to be held in common, so that each and every member of either tribe shall have an equal undivided interest in the whole: Provided, however, No part thereof shall ever be sold without the consent of both tribes, and that said land shall revert to the United States if said Indians and their heirs become extinct or abandon the same."

It does not say that if some Choctaws abandon the same it shall revert to some other Choctaws. Much less does it say that being in Mississippi with old friends, neighbors, and associations is constructive abandonment. We deny any intention of abandonment of our inheritance. Nor can we be deprived of our vested right given under the treaty.

The land has not reverted to the United States, because the Choctaws and Chickasaws have not become extinct or abandoned the same. In other words, the condition imposed by the United States by the act of Congress of May 28, 1830—a condition to which the Choctaws were not a party, a condition that had in view the right of the sovereign to a possible escheat and had nothing else in view, far less the domestic polity of the Choctaws or any concern in depriving one Choctaw in order to add to the interest of another—is void by failure of its terms.

Under the 11th and 12th articles of this treaty (Rev. Tr. 278, 279) provision was made for payment of the net proceeds of reservations made to Choctaws under the treaty of 1830 and sold by the United States. This matter was settled in the Supreme Court of the United States, and the net proceeds paid over to the Choctaw Nation in 1869.

Such of your petitioners who received their part of this net proceeds may be denied the right of participation under the terms
375 of article 14, treaty of 1830, in the Choctaw annuities established thereunder, but otherwise their rights to participate in the lands or proceeds thereof is undeniable under the treaty.

In the Choctaw treaty of April 28, 1866, article 10 (Rev. Tr. 292), the United States reaffirms all obligations arising out of treaty stipulations, and article 45 (Rev. Tr. 301) recites that—

"All the rights, privileges, and immunities heretofore possessed by said nations or individuals thereof, or to which they were entitled under the treaties and legislation heretofore made and had in connec-

tion with them, shall be, and are hereby, declared to be in full force, so far as they are consistent with the provisions of this treaty."

In articles 11, 12, and 13 of this treaty of 1866 (Rev. Tr. 293) it is provided that should the Choctaws and Chickasaws agree to allotment, it might be done at the expense of the United States, and special notice shall be given, "not only in the Choctaw and Chickasaw Nations, but by publication in newspapers printed in the States of Mississippi, Tennessee, Louisiana, Texas, Arkansas, and Alabama, to the end that such Choctaws and Chickasaws as yet remain outside of the Choctaw and Chickasaw Nations may be informed and have opportunity to exercise the rights hereby given to resident Choctaws and Chickasaws," showing beyond possible doubt what was meant by us in the previous treaties, as well as in this one, and what the United States meant and what the Choctaws meant.

We agreed, and the United States guaranteed and the Choctaw Nation guaranteed, that Choctaws might remain in Mississippi as United States citizens and still retain the rights of a Choctaw citizen, except as stated in the then annuity.

These rights we insist on and ask that the United States commission do be instructed to enroll our names in the roll of proposed allottees, and your petitioners will ever pray.

(Signed) JACK AMOS and 246 Others,
Acting Each for Himself and the Members of His Family.
 C. F. WINTON, Counsel.

Opinion.

BOOTH, *Judge*, delivered the opinion of the court:

This case comes to the court under special jurisdictional acts. The suit is one by various claimants to recover for services rendered and expenses incurred in securing Mississippi Choctaw Indians the right of citizenship in the Choctaw tribe. The whole controversy extends over a long period of years, is much involved, and the statement of the case must be extracted from a most voluminous record of hundreds of pages of printed testimony, which, together with the briefs of counsel, make up ten printed volumes of considerable size.

The native habitat of the Choctaw Indians was in the South, principally in what is now the State of Mississippi. On September 27, 1830, the United States concluded with the Indians what is known as the "Dancing Rabbit Creek treaty" (7 Stat. L., 333). The principal intent, indeed, the lasting benefit, to be secured to the United

States by the terms of the treaty was the removal of the main
 376 body of the tribe to Indian Territory. This was to be accomplished by an interchange of landed estates, the Indians relinquishing all title to their eastern possessions for a reservation in the West. In a spirit of evident compromise, and as an inducement for the final consummation of the undertaking, the Indians, always loath to depart from their native lands and surroundings, secured a

reservation in the stipulations of the instrument which in the end gave birth to this litigation.

Article 14 of the Dancing Rabbit Creek treaty provided a method by which such Choctaws as chose to avail themselves of the provision might remain in the east and become citizens of the States wherein they resided. Those who did so were to be allotted a certain acreage of land varying in extent according to the number of children in the family. Upon these various allotments a residence of five years was an indispensable condition precedent to the acquirement of a fee-simple title; and it was expressly set forth that all Indians remaining in the State should be considered as intending to become citizens thereof. The final clause of article 14 created the condition which not only occupied the attention of Congress and the Indian Office for many years, but also erected the issue for the settlement of which all the claimants herein claim some compensation. It is in the following language:

"Persons who claim under this article shall not lose the privilege of a Choctaw citizen, but if they ever remove they are not to be entitled to any portion of the Choctaw annuity."

The number of Indians remaining in Mississippi after the emigration of the tribe is indeterminate. Those that did so remain adopted the habits, customs, and dress of the white inhabitants of the State; all tribal laws were abolished; all Indian communal association was discontinued; and they were absorbed into the body politic of their respective communities. The Government assumed no jurisdiction over them and the Congress made no appropriations for them. They were treated, in so far as the United States was concerned, as citizens of the State of Mississippi and of the United States. The State of Mississippi also recognized by positive legislation their status as citizens of the State. The State legislature by an act passed January 19, 1830, abolished all Indian tribal relations and laws theretofore prevailing among the Indians and made them citizens of the State. This legislation was ratified by the constitution of 1832, reenacted in 1840, and carried into the Mississippi Code of 1848.

All doubt as to their civil and political status, which is an important fact in this case, was finally removed by the sixth section of the act of February 8, 1887 (24 Stat. L., 390), which conferred citizenship upon all Indians living apart from their tribe and who have adopted the habits, etc., of the white man with intent to become citizens of the United States. The act of 1887 was amended by the act of March 3, 1901 (31 Stat. L., 1447), extending citizenship to Indians in Indian Territory.

The Choctaw Nation of Indians west for many years after their removal to Indian Territory never contested nor even questioned the right of the fourteenth article Mississippi Choctaws to citizenship in the parent tribe. On two different occasions they manifested a positive desire to have their eastern brethren join them in the west, extending to them the privileges of the treaty. In 1889 they
377 memorialized Congress to provide funds for the removal of large numbers of Mississippi Choctaws to their western reservation, and in 1891, by council action, the nation itself appointed a

commission and provided funds for their removal, on which occasion at least 181 Indians were removed. There is not in the record a single suggestion of opposition to the treaty rights of the Mississippi Choctaws until some time after the year 1893, when the Government inaugurated, through the Dawes Commission, an extensive inquiry among and negotiation with all the Indian tribes in Indian Territory with the avowed intention of allotting all their lands to them in severalty, distributing their Indian funds, and otherwise discontinuing the long-time relationship of guardian and ward.

Notwithstanding this legislation no violent opposition developed upon the part of the nation west until it became apparent that thousands of mixed-blood Choctaws not residents of Mississippi were seeking enrollment under that legislation. The Choctaw Nation in fact never interposed objection to the enrollment of his eastern brother of the full blood claiming rights under the treaty of 1830, if they in good faith removed to the Territory, until largely through the efforts and constant agitation of the parties claiming here, an attempt was made to procure legislation extending the right of citizenship to these claimant Indians, which would in the aggregate increase their rolls to the extent of 25,000 or 30,000 Indians, including thousands of mixed-blood Choctaws who resided elsewhere than in Mississippi. A ceaseless and persistent effort was made by the claimants herein, not only to procure legislation according these general rights, but at the same time vigorously contesting the requirement of removal to the Territory in any event. This alone prolonged and delayed the rights subsequently accorded the present beneficiaries by Congress.

The Dawes Commission was established by the act of March 3, 1893 (27 Stat. L., 645). It made a very comprehensive report of its proceedings to Congress, and on June 10, 1896, Congress directed the commission to make a roll of the Five Civilized Tribes, and provided that all applicants for enrollment should file their applications with the commission within three months from the passage of this act, with right of appeal to the United States courts.

This legislation was the signal for all the activity thereafter manifested upon the part of all the claimants in behalf of the Mississippi Choctaws. The legislation on its face indicated the conclusion of Indian claims in both funds and lands to the tribal property of the Five Civilized Tribes, of which the Choctaws were one. It was likewise the inspiring cause for persistent opposition to the rights of Mississippi Choctaws under the fourteenth article of the treaty of Dancing Rabbit Creek. It became at once apparent that the admittance of a large body of Mississippi Choctaws to participation in the allotment of the Choctaw lands would proportionately decrease the individual allotment to each member of the western tribe already enrolled, and thus materially diminish the value of their entire estate. The western Indian renounced his former affection for his eastern brother and, reversing the earlier policy of the western tribe, interposed objections to his unqualified citizenship.

The usual Indian controversy arose and innumerable objections and counter-objections predicated upon degree of Indian blood and

378 Indian ancestry, supplemented by arguments pro and con as to the necessity of removal to the Indian Territory on the part of the Mississippi Choctaws, prolonged the settlement of treaty rights and projected the consideration of the whole question through several sessions of Congress. The review of the legislation is quite tedious but indispensable.

Early in 1896 the attention of Congressman (now United States Senator) John Sharp Williams, of Mississippi, within whose district the major number of Choctaw Indians resided, was directed to the rights of his constituents under the fourteenth article of the treaty of Dancing Rabbit Creek. Senator Williams immediately became active; he investigated the subject with great diligence; acquired valuable information from the Interior Department, and prepared, in conjunction with his Mississippi colleagues and other Senators and Congressmen interested in Indian affairs and the Interior Department, many and effective bills and amendments to bills for consideration by Congress, some of which were subsequently enacted into law.

The first of these was a provision inserted in the Indian appropriation act of June 7, 1897 (30 Stat. L., 83), directing the Dawes Commission to investigate and report to Congress whether the Mississippi Choctaw Indians are not entitled to all the rights of Choctaw citizenship under their treaties except interest in the Choctaw annuities.

The commission reported that in view of a decision of the United States Court in Indian Territory requiring the removal to Indian Territory of all Mississippi Choctaw Indians before any right of enrollment accrued, and in view of the debatable question as to tracing ancestry to some person who originally availed himself of the provisions of the Dancing Rabbit Creek treaty, together with the absence of any legal authority on its part to receive additional applications because the date of limitation therefor had expired, it recommended the submission of the whole question to the United States Court of Claims.

In June, 1898, the following Congress, by the twenty-first section of what is known as the Curtis Act, removed the obstructions in the way of the Dawes Commission in the consideration of Mississippi Choctaw claims, under the fourteenth article of the Dancing Rabbit Creek treaty, and gave the commission full power and authority to determine the identity of all the Mississippi Choctaw claimants. This legislation restricted the right of citizenship to such Mississippi Choctaws as had theretofore removed to the Territory, reserving to Mississippi Choctaws, however, all rights they might have theretofore acquired under any Indian treaty or law of the United States.

On December 2, 1898, the Dawes Commission caused to be printed and extensively circulated among the Mississippi Choctaws in Mississippi and elsewhere a circular informing them of their rights under the Curtis Act, notifying them of the time and place where the commission would sit to receive applications, and giving in detail the exact manner of procedure necessary to procure identification. In pursuance of the public notices given as aforesaid, one of the commissioners, Mr. A. S. McKennon, visited Mississippi, filled various

appointments previously made to meet the Indians, and completed a schedule of 1,923 persons whom he thought entitled to citizenship. The "McKennon roll" was constructed upon the theory of according citizenship to all full-blood Mississippi Choctaw whose ancestors were living in Mississippi at the date of the treaty of 1830. The roll was approved by the Dawes Commission, but was later on withdrawn, as it had not met the approval of the Secretary of the Interior, he in fact subsequently disapproving it entirely.

379 A second commission was dispatched to Mississippi in December, 1900, by the Dawes Commission. The manifest errors and omissions of the McKennon roll made it imperative. This commission held public meetings at Hattiesburg, Meridian, and other places in Mississippi, and continued in session until August, 1901, sometimes at one place and then at another.

On May 31, 1900 (31 Stat. L., 236), Congress further extended the right of enrollment to Mississippi Choctaw Indians duly identified for citizenship in the Choctaw Nation to any time prior to the approval of the final Choctaw rolls then in process of completion by the Dawes Commission, and if such identified Indians made bona fide settlement in the Choctaw country previous to said date the commission was directed to enroll them. This was in effect a substantial extension of time for removal to the Territory. This same act expressly invalidated all contracts or agreements which in any manner provided for the sale or encumbrance of the Indians' allotments, a most significant provision and extremely important in the consideration of this case.

For some reason not apparent upon the face of the statute the Dawes Commission invoked a species of technical refinements and in its quasi judicial capacity construed the act of May 31, 1900, as prospective in its operation, and required all applicants thereunder to trace their ancestry to Mississippi Choctaw Indians who remained in Mississippi and received patents for lands under the fourteenth article of the Dancing Rabbit Creek treaty. It was a most restricted ruling and resulted in the enrollment of but six or seven persons out of from 6,000 to 8,000 applicants.

An attempt was made in February, 1901, to compose the differences as to enrollment by an express agreement between the Dawes Commission and the Choctaw Nation of Indians. The contract, though executed, failed of congressional approval. It was followed, however, by the agreement of March 21, 1902, which, with the amendments thereafter adopted by Congress and later ratified by the Choctaw Nation, concluded in all substantial respects the rights of the Mississippi Choctaws to citizenship in the western tribe. This contract, as amended and subsequently approved by Congress by the act of July 1, 1902, is known as the Choctaw-Chickasaw supplemental agreement, and closed in all important particulars this long and somewhat furious contest. In the end by virtue of this agreement Mississippi Choctaw Indians identified under the provisions of section 21 of the act of June 28, 1898 (Curtis Act), might at any time within six months after the date of their identification by the commission make bona fide settlement within the Choctaw country, and upon

proof of the same within one year after the date of identification should be enrolled as a Mississippi Choctaw, and upon approval of the rolls by the Secretary of the Interior became entitled to the same rights, privileges, and allotments of lands as the members of the Choctaw Nation. No application was to be received after six months from the passage of the act, and the commission was specifically directed to enroll "all full-blood Mississippi Choctaw Indians and descendants of any Mississippi Choctaw Indians, whether of full or mixed blood, who received a patent of land under the said fourteenth article of said treaty of 1830 who had not moved to and made bona fide settlement in the Choctaw-Chickasaw country prior to June 28, 1898." All the aforesaid Mississippi Choctaw Indians were to be carried upon a separate roll.

In 1903 (32 Stat. L., 982) Congress appropriated \$20,000 to be expended under the direction of the Secretary of the Interior in removing indigent and identified full-blood Mississippi Choctaws to the Territory. This appropriation was expended in the removal of 420 Indians by special train and their subsequent subsistence, together with the purchase of tools and farming implements for them, until placed upon their individual allotments.

The final disposition of all Choctaw matters was provided for in the legislation of April 26, 1906 (34 Stat. L., 137), providing for enrollment of the minors and descendants of deceased Indians and covering certain contingencies arising from death of a duly enrolled Indian.

The astounding number of 25,000 persons applied for enrollment as Mississippi Choctaws. The commission rejected all applications except 2,534, and 956 of these failed of allotment because they furnished no proof of removal or settlement in the Indian country; 1,578 persons were finally enrolled and received allotments as members of the Choctaw Nation, having furnished proof of removal to the Territory and otherwise complied with the requirements of the law.

The course of all the above legislation and the rights and privileges secured thereby is of paramount importance in this case. The alleged services rendered by attorneys in a professional capacity and the sums expended by others not lawyers in securing the benefits alleged to have been derived by the same, constitute the gravamen of the complaint herein and become the critical inquiry in the case.

Twenty-five claimants prefer individual and partnership claims against the Mississippi Choctaw Indians for participating in all the detailed proceedings above set forth, varying in amount from \$5,000 to 15 per centum of \$15,000,000, an alleged conservative estimate of the value of the landed estate recovered for the fortunate ones finally enrolled. Eight of the 25 claimants secured at one time and another 3,224 contracts with individual Indians. These are contracts of employment and representation, and most generally provided for the generous compensation of one-half the value of all the benefits finally accruing to the obligee. The remaining claimants rest their cause of action upon assignments of some of the contracts taken by their collaborators or special employment by the parties having con-

tracts with the Indians. Of course all the claimants are now insisting upon rights under the special jurisdictional acts, and the detailed history of each claim will be adverted to hereafter.

Before adverting to the jurisdictional question raised by the defendants, it is quite necessary to state briefly the surroundings and the physical and mental status of the Mississippi Choctaw Indians from 1830 forward. As appears from Finding XI they were extremely poor, lived under insanitary conditions, earning their livelihood as best they could by manual labor; their children did not attend the schools provided for the whites, and the extent of their illiteracy is more than manifest from the fact that a great majority of them executed their contracts with claimants by mark. They were

childishly unsophisticated, had absolutely no conception of their property rights or any well-considered ideas as to what they should pay to secure them. It was no task to secure their assent to almost any proposition, evidenced by the fact that as a general thing they manifested no compunctions of conscience in duplication of express agreements, and hesitated in acting so frequently as contrary advice was offered. These statements are all deducible from the record. It is almost incomprehensible to believe otherwise when it positively appears that with apparent ease individual contracts were obtained from these Indians providing for an absolute grant of one-half of their total estate in the event of success, and in such numbers that even the minimum number obtained by one representative would represent a fortune. Attorneys at law, farmers, merchants, bankers, a preacher, and others without any settled vocation in life, were potentially equal before "these remnants of a once powerful tribe," and experienced no difficulty in procuring contracts of employment to represent them.

The defendants challenge the jurisdiction of the court, resting a most vigorous contention upon individual contractual liability, asserting the cause of action to be between adverse parties with complete and adequate remedy in the local courts; that the jurisdictional acts simply afford a forum for the adjudication of the claims without in any way changing their real or legal status or imposing liability upon the defendant Indians. The express provisions of the jurisdictional acts are emphasized in support of this contention, and the status of the claim as it appears from the record is cited as a convincing proof that the litigation is between citizens.

There were two jurisdictional acts—one enacted April 23, 1906 (34 Stat. L., 140), the other May 29, 1908 (35 Stat. L., 457). The verbiage of the two statutes in the enacting part is similar in all substantial respects, the later one being expressed designed to admit the prosecution of additional claims by other claimants. It is the directory clauses of the two acts that differ in important particulars, especially as to the manner of enforcing any judgment the court may render. In order to facilitate an intelligent consideration of their provisions we exhibit here the two statutes:

"That the Court of Claims is hereby authorized and directed to hear, consider, and adjudicate the claims against the Mississippi Choctaws of the estate of Charles F. Winton, deceased, his associates

and assigns, for services rendered and expenses incurred in the matter of the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation, and to render judgment thereon on the principle of quantum meruit in such amount or amounts as may appear equitable or justly due therefor, which judgment, if any, shall be paid from funds now or hereafter due such Choctaws by the United States. Notice of such suit shall be served on the governor of the Choctaw Nation, and the Attorney General shall appear and defend the said suit on behalf of said Choctaws."

The jurisdictional act was amended by an act approved May 29, 1908 (35 Stat., 457), which provides:

"That the Court of Claims is hereby authorized and directed to hear, consider, and adjudicate the claims against the Mississippi Choctaws of William N. Vernon, J. S. Bounds, and Chester

382 Howe, their associates or assigns, for services rendered and expenses incurred in the matter of the claims of the Mississippi Choctaws to citizenship in the Choctaw Nation, and to render judgment thereon on the principle of quantum meruit in such amount or amounts as may appear equitable and justly due therefor, which judgment, if any, shall be paid from funds now or hereafter due such Choctaws as individuals by the United States. The said William N. Vernon, J. S. Bounds, and Chester Howe are hereby authorized to intervene in the suit instituted in said court under the provisions of section nine of the act of April twenty-sixth, nineteen hundred and six, in behalf of the estate of Charles W. Winton, deceased: Provided, That the evidence of the interveners shall be immediately submitted: And provided further, That the lands allotted to the said Mississippi Choctaws are hereby declared subject to a lien to the extent of the claims of the said Winton and of the other plaintiffs authorized by Congress to sue the said defendants, subject to the final judgment of the Court of Claims in the said case. Notice of such suit or intervention shall be served on the governor of the Choctaw Nation, and the Attorney General shall appear and defend the said suit on behalf of the said Choctaws."

Under the first act the claimant Winton and his associates filed their petition October 11, 1906, later amending the same after the passage of the act of May 29, 1908. All the other claimants came in under the last act.

The statutes are in *pari materia*, the additional remedies as to enforcement of judgment in the later one being made expressly applicable to the earlier claimants.

An analysis of the findings, which discloses the proceedings taken by the various claimants under this jurisdiction, demonstrates beyond peradventure the relationship originally obtaining between the claimants and defendants and fixes by the acts of the parties themselves what in the absence of some positive law to the contrary would be their respective liabilities under the common law. The jurisdictional act in the first clause refers expressly to two claims—first, the claims of the persons mentioned therein for services rendered and expenses incurred in the matter of the second claim, viz: The Mississippi Choctaws to citizenship in the Choctaw Nation. We have

discussed at length the origin and development of the claims of the Mississippi Choctaws to citizenship in the old nation, leaving now only the additional observation that the services to be rendered in connection with said claim were legislative services of a professional character, and the alleged expenses incurred, in so far as removal of the Indians is concerned, could not accrue until the legislation admitted of their existence. What then is the claim referred? It is and must be conceded that the jurisdictional act creates no liability against the defendant Indians or the United States. Its function is restricted to the right to sue in a judicial tribunal vested with authority to determine from the controverted questions of law and fact whether under the law the claimants have a legal demand for compensation from the defendants. *Green v. Menominee Tribe*, 233 U. S., 558.

The defendant Indian in this case never in a single instance, so far as the record shows solicited one of the various claimants to appear for him professionally or expend a dollar in his behalf. The solicitation was wholly from the claimants. Various ones among
382 them visited the Indian in his Mississippi home and procured by personal contact with him individual contracts to represent him—not a band, tribe or nation of Indians, but individual citizens of Indian blood, agreeing in writing to pay a certain sum upon the happening of a certain contingency, and not infrequently granting interest in individual property to be acquired as security for the Indian's performance of his obligation under the contract. They were not only in fact contracts for personal services to be rendered each individual; they were more; they were powers of attorney authorizing substitution of persons other than the named agent to act; they provided for the employment of additional agents and solicitors. The scope of authority obtained by the agent or attorney under these individual contracts was extensive and plenary; no detail has been omitted which might suggest itself to the skilled lawyer or trained claim agent. That this contractual relationship sought by and intended to be created by the claimants was the initial proceeding for binding the defendants in law to the payment of large sums of money is more than manifest by the extensive field of territory covered in the haste to procure individual contracts and the sums expended in their procurement. Numerous contracts were assigned and large sums of money realized therefrom. Companies were incorporated with no other assets save these assigned contracts. The petition of every claimant and intervener refers to these individual contracts, and they are produced in the record and copies set forth in an appendix to the findings.

To effectuate the contentions of the defendants with respect to the jurisdictional issue, however, the court must find from the record in the case that notwithstanding the individual contractual relationship the claimants have no justiciable claim. The jurisdictional act refers a claim and if from the record it is ascertainable that a legal demand has been proven to exist, it can not be dismissed simply because its origin was consummated in written agreements for which the jurisdictional act affords no remedy. It is quite possible for a

court to render judgment upon the basis of quantum meruit, although the transaction in its inception arose from express agreements fixing specific compensation, especially so where it is within the power of the legislative body granting jurisdiction to prescribe the conditions upon which the defendants may be sued.

That Congress possesses plenary authority over Indian lands and Indians when dealing with respect thereto is not to be denied. From the decision of the case of *Lone Wolf v. Hitchcock*, 187 U. S., 553, down to the recent case of *Tiger v. Western Investment Co.*, 221 U. S., 286, this principle has been repeatedly affirmed. The last case cited is a very exhaustive opinion covering every phase of the controversy such as suggested here. There can be no room for argument in view of the number of adjudicated cases that the grant of citizenship to the individual Indian is not inconsistent with governmental control and supervision of Indian property or the exercise of governmental jurisdiction over the Indian in respect to his dealings with said property.

Congress by the jurisdictional acts referred to this court the claim of the petitioners and intervenors, and if from the record the court can find the existence of a legal relationship that warrants the rendering of a judgment upon the principles of quantum meruit 384 the consequential liability attaches. Congress has ample authority to charge the Indian lands involved in this case with the payment for services rendered or expenses incurred in securing to the Indians this estate, and the wisdom of their action is not subject to judicial review. *Bailey v. Osage Indians*, 43 C. Cls., 353; *Butler & Vale v. United States*, 43 C. Cls., 497; *Sac & Fox Indians v. United States*, 45 C. Cls., 287; 220 U. S., 481; *Mille Lac Indians*, 46 C. Cls., 424; 229 U. S., 498.

It in no wise militates against this contention that the jurisdictional acts provide for a judgment enforceable against funds due the Mississippi Choctaw Indian as an individual by the United States or creates a lien upon his individual allotment. Congress is dealing with Indian tribal lands, and it can limit, prescribe, and impose such conditions and limitations with respect thereto as in its wisdom seems just and equitable. *Heckman v. United States*, 224 U. S., 413. In this case the court said "Its efficacy does not depend upon the Indians' acquiescence. It does not rest upon convention, nor is it circumscribed by rules that govern private relations. It is a representation which traces its source to the plenary control of Congress in legislating for the protection of the Indians under its care, and it recognizes no limitations that are inconsistent with the discharge of the national duty." While it is true that the *Heckman* case was a suit to set aside conveyances and recover for the Indian lands disposed of, still the fundamental principle obtains that Congress may in its discretion administer the Indian property as to it seems just and equitable to the Indian and the white man dealing with him.

On the argument of the case the court experienced some doubt upon the question of jurisdiction, but this doubt has been removed by an examination of the authorities cited. The jurisdictional acts are subject to a practical as well as technical construction. The inten-

tion of Congress must prevail, and that intention is manifest from the language of the acts when the situation of the claimants with respect to the subject matter is kept in view. Congress by the act of May, 1900, had invalidated all contracts looking toward a sale or encumbrance of the allottees' lands. Whether in any event the contracts invalidated or those not invalidated were enforceable against an individual Indian is far from certain. One thing is sure, however, they never could have been made the basis of any suit wherein a judgment rendered thereon could become enforceable against the Indian property. Congress observed the situation of affairs and by the jurisdictional acts referred to this court the question of a legal claim against their wards for compensation upon the principles of quantum meruit.

The case of *Green v. Menominee Indians*, *supra*, is not contrary to this holding. The acts are in nowise similar. The service rendered is quite distinct. In the *Green* case supplies furnished the individual Indian were to be paid for by an arrangement which brought the Indian's funds into the hands of a third party; for some reason the written arrangement miscarried, and it was sought to impose the failure upon the Indians. Here we have an Indian fund and an Indian estate carried upon the rolls of the departments in the name of the Mississippi Choctaws as a class—a fund and an estate which was the result of negotiation and legislation alleged to have
385 been successfully terminated by the services of the petitioners, and over which Congress has absolute and plenary power in its administration.

Whether this court can render a judgment upon the principles of quantum meruit is quite another matter which necessarily depends upon the proof in each individual case. The claim in suit, as we view it, is an assertion of liability emanating from the performance of service under an express contract, a service performed, a contract executed, an agreement where the plaintiffs have done all they agreed to do under the express agreements and nothing remains except to pay them therefor. The agreements themselves being invalidated, the service having been performed with the knowledge and consent of the defendants and from which they derived and have accepted benefits, the law implies an obligation to pay what such services are reasonably worth. It has been uniformly held in the cases heretofore cited that jurisdictional acts, similar in most respects to the ones here under consideration, create no liability under the express agreements, the court discarding them in so far as they stipulate for the payment of compensation, leaving for our consideration the determination of the question whether the transaction in all its aspects, taking into consideration the situation of the parties, is one which from the proof satisfies the court that the claimants performed the services claimed for, resulting in benefit to the defendants under such circumstances that the law will imply a correlative obligation to compensate them therefor. The contracts are admissible in evidence both to establish knowledge upon the part of the defendants and as evidence of what might constitute a reasonable award for the work done. This is what the court understands Congress to mean

when it directs a judgment upon the principle of quantum meruit (9 Cyc., 686).

Congress does not by the legislation create the situation necessary to be supplied by proof before the court can act. It affords to the claimants a forum where the burden rests upon them to bring in a record of sufficient strength to sustain a recovery upon the legal principles provided by Congress as the court's guide.

The judgment, if any, to be awarded is not an individual one. Proof of service to an individual Indian is not sufficient to recover. Congress was not assuming jurisdiction over individual Mississippi Choctaw Indians as Indian citizens, for if such had been the intent his individual right to be heard in defense would not have been, if it could be, denied him. The jurisdictional acts comprehend service to the Mississippi Choctaw Indians as a class, and under their terms the proof must establish a service that extended alike to all the Mississippi Choctaws enrolled as such on the rolls of the old nation. In the language of the jurisdictional acts, it must appear that the service was rendered in connection with and for the avowed purpose of legalizing "the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation." Incidental work and labor performed for the benefit of individual Indians, no matter how extensive, was not within the contemplation of Congress when a charge was laid against the Indian defendants' lands and funds, unless it can trace unmistakable benefits accruing alike to each and all of the 1,643 Mississippi Choctaw Indians finally enrolled in the nation and allotted lands under the law.

The matter of the claim of Mississippi Choctaws to citizenship in the Choctaw Nation was a legal controversy between the two
386 Indian parties as to the construction of the fourteenth article of the Treaty of Dancing Rabbit Creek. The determination of this issue must in the first instance rest with Congress. It could not have been the subject of judicial consideration in the absence of legislation. The appeal to Congress brought legislative relief and citizenship was accorded the Mississippi Choctaws. The right to citizenship in the nation was made clear and unambiguous in the respective laws upon the subject, and here the claim itself, in its legal aspect, the real controversy requiring service, the final solution of what rights were reserved to the southern Indians under the disputed article of the treaty, ended. Thereafter it became a personal matter; if the Indian chose to avail himself of the right, the way was open; if he did not, it was a matter of personal judgment. This is plainly substantiated by the failure of nearly 1,000 beneficiaries already identified to remove to the Territory and acquire property.

At some future date the Congress may deem it just and equitable to relieve these Indians identified but not allotted because of failure to remove to the Territory, and by legislation removing the limitation as to time grant them the full rights and privileges accorded the Indians against whom this claim is made. In that event are we to presume the defendant Indians here impleaded are to bear the full cost and expense of procuring a privilege which in the end inures alike to their belated brethren, thus penalizing the diligent and re-

warding the negligent? Legislation of this character is now pending in Congress and is earnestly urged.

The Congress, it is true, in the legislation which accorded this right, imposed upon the individual Indian applicant the performance of certain conditions precedent to its acquirement—viz, removal to the Indian Territory and residence therein, etc., for a certain specified time—but these details of preliminary procedure, indispensable to the fixing of uniformity in the administration of the law, were not and are not merged in the essential thing itself; they constitute no part of the claim to citizenship in the nation. It is simply the mode and method prescribed by which the Mississippi Indian may avail himself of the benefits granted him by Congress in fixing his right of citizenship. By no possible means can it be said that money expended for the removal of from 20 to 60 individual Indians to the Territory redounded to the general benefit of the Mississippi Indians as a class. While it is true they must remove to acquire the right, yet to bring a claim against the class it must affirmatively appear that the service rendered and funds expended benefited all the class alike. The claim for removal is an individual one; it can not be otherwise. Some claimants transported their Indians in box cars, others afforded their clients Pullman sleepers, while still others housed the Indians in temporary shacks, one delegation enjoying the luxury of quarters at local hotels. The Government expended \$20,000 in the removal and subsistence of quite a number, and doubtless not a few provided their own means of transportation at their own expense. Certain it is that no one claimant or class of claimants transported all the Indians enrolled or expended sums which come within the range of any rule of uniform expenditure or reasonableness in amount.

All these sums of alleged expenditure occurred subsequent to the acquirement of the right of citizenship and are incidental only to that right. It was personal service rendered to the individual Indian, moneys advanced and expended for his personal benefit, and not a claim recognized by Congress as one chargeable against the Indian lands. In addition to what has been said, it would be an absolute impossibility to reconcile the mass of confusing and contradictory testimony respecting this very subject and decide from the records what would be a reasonable charge for this service. It is beyond question that many individuals repaid some claimants for the moneys advanced for this purpose. Possibly many more, if permitted to do so, could prove a similar payment. It is inconceivable that Congress intended to reimburse claimants for the funds thus alleged to have been expended and provide no means of defense for the individual Indian charged. On the contrary, the very absence of any provision for individual defense and representation upon the part of the individual Indian manifests an indisputable intention to limit the jurisdiction of the court to an ascertainment of services rendered and expenses incurred which accrued alike to the Indians as a distinct entity and capable of being equitably apportioned among them.

The claim of Charles F. Winton, as we now consider it, is predi-

cated upon alleged services rendered the Mississippi Choctaws in conjunction and association with Robert L. Owens, Preston S. West, Walter S. Logan, deceased, Frank B. Crosthwaite, and John Boyd. West, Logan, Crosthwaite, and Boyd prefer no individual claim; in fact, file no individual petitions. Whatever sums they may be entitled to receive are to be paid them by Messrs. Owen and Winton.

The findings show that in June, 1896, following the act of June 10, 1896 (29 Stat. L., 321), which conferred jurisdiction on the Dawes Commission to make a roll of the Choctaw Indians, Winton and Owen entered into a written arrangement by the terms of which Winton was to proceed to Mississippi and procure from the Choctaw Indians residing there as many contracts as possible, employing said Winton to represent them in securing their rights to enrollment in the nation. Winton was to do the manual labor in this respect and Owen was to bear the expense incident thereto, the profits, if any to be shared equally. This partnership agreement was subsequently modified to some extent, but the modifications are of minor importance. Winton went to Mississippi immediately after the conclusion of this agreement and at this time secured about 1,000 individual contracts with full-blood Mississippi Choctaws, the Indian agreeing to compensate said parties by the payment of a fee of one-half of the net interest of his allotment when the same was secured. All of these contracts were expressly invalidated by the act of May 31, 1900, *supra*.

In June, 1901, Winton and Owen having previously submitted to an eminent firm of lawyers the question of the validity of the first contracts taken by them, in view of the act of May 31, 1900, and having received an adverse opinion thereon, together with suggestions and advice as to how to proceed in the premises, abandoned the earlier contracts and secured 834 additional contracts providing for a compensation for services equal to one-half the value of the net recovery of or for the Indians in land, money, or money values. The last contracts embraced a total number of at least 2,000 Indians.

In the meantime, however, Owen early in 1896 had called the attention of Hon. John Sharp Williams, then a Representative in Congress from the district where the major portion of the Mississippi Choctaws resided, to the possible rights of his constituents to participate in the allotment of Choctaw lands in the West, at the same time furnishing him with a copy of the treaty of Dancing Rabbit Creek and directing his particular attention to the fourteenth article thereof. Williams up to this time had taken no interest in the matter.

Winton had likewise been industrious in December, 1896, January, 1897, and September, 1897. On each of these occasions he presented printed memorials to Congress directing attention to the rights of Mississippi Choctaws in the Choctaw Nation under the fourteenth article of the treaty. These petitions to Congress are significant in that they put forth a contention for the right of the Mississippi Choctaws to participate in the allotment of Choctaw lands on the theory that by the terms of the treaty the Mississippi Indians had bought and paid for two things—the right of residence in Mississippi, and of

not losing the right of citizenship in the nation because of such residence.

In October, 1896, Owen applied to the Dawes Commission for the enrollment of Jack Amos and 97 other full-blood Mississippi Choctaws whom he represented under the contracts heretofore described. The contention advocated for their enrollment was rested on the act of June 10, 1896, *supra*, and involved the question of removal from Mississippi to the Indian Territory, Owen insisting that removal was not necessary. The commission declined to enroll his clients, which ruling was subsequently affirmed on appeal to the United States court for Indian Territory, the case later going to the Supreme Court, where it failed of consideration upon jurisdictional grounds, being, however, indirectly affirmed in the case of *Stephens v. Cherokee Nation*, 174 U. S., 445.

In February, 1897, Owen drafted a resolution, which was subsequently passed by the United States Senate, calling for certain information from the Interior Department relative to the contemporaneous proceedings between the Choctaw Indians and the representatives of the United States occurring at the time of the negotiation and execution of the treaty of Dancing Rabbit Creek. The information was promptly furnished and was at all times easily accessible and well known to those charged with the administration of Indian affairs.

In June, 1897, Congressman Williams secured the legislation directing the Dawes Commission to investigate the claims of the Mississippi Choctaws (30 Stat. L., 83). Thereafter Owen appeared before the commission in the interests of his and Winton's clients. Nothing more was done by the claimants until subsequent to the passage of the act of June 28, 1898, known as the Curtis Act. It will be recalled that this legislation authorized the identification of Mississippi Choctaws who had removed to the Territory, and was the result of Congressman Williams's efforts in their behalf. Following this Owen, through Winton, prepared a circular, and it was generally circulated among the Indians, pointing out the requirements of the Curtis Act and advising them as to how they might be identified. The circular was, of course, unofficial and was later substituted by the official action of the commission, by which it publicly advised the Indians of the time when and place where the commission would sit to receive applications and the mode of procedure and requirements for enrollment. It will be recalled that Commissioner McKennon

389 proceeded to Mississippi to execute the orders of the commission, and after he arrived there his labor and progress was interfered with and considerably retarded by the interference of Winton and others on the ground, who persistently and industriously delayed and confused the Indians by solicitations for contracts of employment to represent them before McKennon and elsewhere. This fact was emphasized in the report of Commissioner McKennon and is fully sustained by the record.

Neither Winton nor any other claimant, so far as the record discloses, made objections to the McKennon roll, nor were they in any-

wise instrumental in its final disapproval, although it was manifestly erroneous and inaccurate. In fact, Winton, on February 7, 1900, addressed a memorial to Congress which, in effect, approved the principles adopted by McKennon in making up his roll. Congress disregarded the petitions of Winton, and it was apparent to all concerned that the removal of the Mississippi Indians to the Territory would be made an indispensable prerequisite to the securing of citizenship. So we find, for the first time, on April 4, 1900, Winton and his associates suggesting legislation embodying the idea of removal. The act of May 31, 1900, heretofore adverted to, provided for removal, but its passage is in nowise to be accredited to the service of any of the claimants. It was due wholly to the efforts of Congressman Williams and his colleagues in both House and Senate. This is obvious from the last clause of the statute, which expressly invalidated all contracts with the Mississippi Indians and freed their funds and lands from any charge alleged to have been incurred by them in reference thereto.

That Winton and his associates yielded reluctantly to the policy of removal and the expense incident thereto is evidenced by the incorporation of the Choctaw Cotton Co. This company was incorporated under the laws of West Virginia for the purpose of financing the removal of Mississippi Choctaw Indians to the Territory. All the contracts of Winton and his associates were assigned to the company. They were the company's only assets. Two-thirds of the capital stock was issued to Owen and one-third to Winton, and the same was placed upon the market, possessing no value aside from the anticipated returns from the assigned agreements.

The purpose and intention of Congress by the passage of the act of May 31, 1900, as we have previously shown, miscarried, and other legislation became necessary. The final legislation, which culminated in the recognition of the rights of citizenship as embodied in the act of July 1, 1901—i. e., the ratification of the Choctaw-Chickasaw supplemental agreement—was drafted by one McMurray and Assistant Attorney General Van Devanter. It was inimical to and opposed by Winton and associates, and their suggestions and memorials in reference thereto were opposed by the Interior Department and the Congress of the United States.

Winton and other claimants, as will hereafter appear, seriously interfered with, obstructed, and retarded the work of the second commission sent by the Dawes Commission to Mississippi in April, 1901, not only by their never-ceasing efforts to procure contracts of employment but by direct and express professional advice not to appear before the commission for enrollment, as it was without power or authority to enroll them.

The court, by the foregoing, has segregated the claim of Winton and his associates, made necessary by its close relationship and
390 interlacing with the various legislative enactments in the course of this litigation, set forth in chronological order in the findings. No claim is made by Winton and his associates for any expenses incurred, the petition in this respect confining its allegations to a right of recovery for services rendered in procuring legisla-

tion, services before the committees of Congress, the Interior Department, and the Dawes Commission.

A close analysis of this particular claim in view of the principles upon which we are to award judgment found in the jurisdictional acts results in a conclusion adverse to its allowance. The most conspicuous service rendered, treating the same now wholly upon its merits, was the suggestion made by Owen to Williams in 1896 relative to the treaty rights of the defendant Indians. It was as aptly styled by Senator Williams "the suggestion of an idea," and had the suggestion been followed by continuous service in harmony with and helpful to the efforts subsequently put forth to secure the adoption of the legislation procured, it would have been of great monetary value to the final beneficiaries. Unfortunately for the claimants, however, the record discloses an advocacy upon their part of legislation in direct opposition to the attitude of the department and Congress—an opposition of sufficient force to delay, confuse, and retard what was the obvious desire of both the Choctaw Nation west, the Indian Office, and the Congress in the speedy and just settlement of this Indian contest. It is not for the court to say whether Winton and his associates were right and the other side wrong. We are alone concerned with what was done and who brought it about. Senator Williams expressly disclaims any subsequent assistance from Winton, his associates, or any other of the claimants in what he did, and repudiates the idea of any influential efforts in the accomplishment of the laws passed. As a rule, and speaking from the record, the court may well say that Winton and his associates' services before the committees of Congress, the Interior Department, and the Dawes Commission were not the moving cause or the paramount reason for the course finally pursued. The initiatory service set in motion the machinery of legislation; the final product, however, was the conception and labor of others, so that in the end the real substantial factor, the laws which accorded citizenship, the vital matter requiring service, and professional service of a high character, was not the result of claimants' efforts. Winton himself was most of the time assiduously engaged in negotiating and procuring contracts of employment from the Indians. His zeal in the cause frequently led him into open conflict with the authorities of the Dawes Commission in Mississippi, which materially injured the Indians' rights. He was in fact in no position to render extensive or convincing service to the legislative branch of the Government and followed precisely the course of his associates. The memorials prepared and signed by Winton individually are shown to have been devoid of influence by contrasting their subject matter with the legislation enacted.

Aside from the merits of the claim it would be impossible to award a judgment in favor of Winton and his associates and conform to the opinion of the court. Winton and his associates were, during the whole course of this controversy, discharging their obligations to the Indians under their individual contracts; they were representing Choctaw Indians, with whom they had individual contracts and en-

391 deavoring by their efforts to secure for them the greatest possible rights, both individual and property, in the Choctaw Nation as Congress might grant. Winton and his associates were advocating with ability and great earnestness a right accruing to the Mississippi Choctaws under the treaty of 1830 to remain in Mississippi and at the same time enjoy the benefits of Choctaw citizenship in the Nation. This was a contention designedly assumed for the express benefit of their individual clients and for which they expected them and them alone to pay compensation. It was a service performed for and in the interest of a certain number of Mississippi Choctaw Indians without the knowledge or acquiescence of a large portion of the class with whom they had no contracts, and for whom other claimants were performing service of a very distinct and different character.

The jurisdictional act does not dispense with the necessity of proving a service of such a general character as to redound to the benefit of all the Indians alike; nor does it relieve the claimants or the court from the burden of detail investigation into the origin, progress, and result of the service for which compensation is claimed. It would be extending the doctrine of an implied contract to pay for services rendered, which may produce beneficial results, to the limit to hold that services performed in the interest of a part of the Mississippi Choctaws imposes the burden upon a large portion of the tribe, totally disconnected in every way from any association with the claimants, of contributing toward payment therefor. Can it be said that because a certain class availed themselves of legislation advocated by claimants they thereby impliedly promised to pay them for services when the record discloses that these very beneficiaries were under contract to pay other claimants for doing the same thing? Supposing some of the Indians, as doubtless some did, had paid their attorneys, must they again respond for a service of which they knew nothing and which they never requested? It is impossible from the testimony to bring home to the large class sought to be charged with expense a common knowledge of what the claimants were doing, or to place them in a situation from which such knowledge may be inferred. The claimants attempt this by the simple introduction of their contracts of employment, supplemented by proof of what they did, apparently resting their case upon the theory that service to a portion of the class was made by the jurisdictional acts equivalent to service for all. To sustain a recovery upon the principle of quantum meruit there must be more in the record than a mere acceptance of benefits made available through the efforts of claimants to serve a particular class of the whole class in virtue of written contracts so to do. In a claim like this the principles of quantum meruit apply to the persons obligated to pay therefor by the written contracts which have been invalidated by law, but it can not extend to a large number of persons who were wholly innocent of any work or labor being done for them with the expectation of compensating others than those whom they employed therefor.

A judgment upon the principles of quantum meruit presupposes a situation of the parties whereby the court may infer from the

circumstances of the case that the defendants knew of the efforts in their behalf, acquiesced in the performance of labor for their benefit, accepted the benefits of such services, and thereby impliedly promised to pay therefor. In this case not only these claimants but all others have failed to do so. They have shown an individual employment, in some instances extensive, in others limited, each

392 acting within his own sphere absolutely without concerted effort or personal affiliation and association. No one was attempting to serve all the Mississippi Choctaws; no one was attempting to do more than secure the enrollment of their individual clients regardless of the rights of others, and frequently at cross-purposes with each other.

In addition to what has been said it is absolutely impossible from the record in this case to ascribe to any of the claimants the credit for securing legislation. The Congress acts deliberately, and information respecting matters of legislation is usually found in the several departments of the Government. In Indian affairs a separate branch of the Department of the Interior has been established by law with full jurisdiction over the administration of Indian affairs. The records of this department are reliable and trustworthy, and when Indian affairs engage the attention of Congress the Indian Office is called into consultation, and from its archives official documents supply information forming the basis of Indian rights, both personal and property. It would be a task impossible of performance to segregate the services of these claimants from the influence of the department's efforts in the adjustment of this controversy and say that the claimants exerted an influence that moved Congress into a recognition of the Mississippi Choctaw Indians' rights to citizenship. The usual course of legislation negatives the contention in the very beginning.

We do not hesitate to say that we have ignored a contention made in the case upon behalf of attorneys generally that looks to an award of \$2,000,000, or 15 per cent of the value of the Indians' estate. This is not a suit susceptible to such an advocacy, and it was unwise to encumber the record with proof of such character. The whole argument predicated upon such a basis in no wise tends to help the court in its deliberation and certainly tends toward a conclusion that the whole transaction from its inception to its close was intensely speculative in its character and devoid of the usual and customary relationship that should always obtain between attorney and client in that the former is always charged with the duty of protecting and conserving his client's interest and property. We venture the assertion that not one of the claimants here concerned but would have gladly accepted employment in this whole matter on a basis of compensation in no wise comparing to the absurd figures noted above.

The claim of Chester Howe, deceased, is, on its face, devoid of merit. It is a claim against Hudson & Arnold and James E. Arnold. Howe traces absolutely no employment by or knowledge to the Indians that he was acting in their behalf. There is nothing in the record to even suggest such a relationship between Howe and the

defendants that would warrant the court in implying a contract upon their part to recompense him. Howe was employed in 1899 by one L. P. Hudson, a member of the firm of Hudson & Arnold, to represent said firm as an attorney at law before the committees of Congress, the Indian Office, and the Dawes Commission. He was never substituted as an attorney by Hudson & Arnold or James E. Arnold under their contracts. James E. Arnold subsequently renewed said contract after the dissolution of the firm of said Hudson & Arnold. Howe's compensation was a contingent fee based upon one-third of the amount stipulated as compensation for the aforesaid firm in their contracts with the Indians, accompanied by an assignment to this extent of an interest in the same.

393 That Howe never considered the Indians as liable for his fees is more than evidenced by the fact that he was on the point of withdrawing from the whole case because Hudson & Arnold had refused to pay him his proportion of certain money collected on the contracts in which he had a one-third interest. Howe, in so far as this record is concerned, never saw a Mississippi Choctaw Indian. He advocated their cause, it is true, and he did it with great faithfulness and signal ability, but he was acting in behalf of his clients, Hudson & Arnold. It would be an act of great injustice to charge the defendants with the payment of an attorney's fee for services rendered by an attorney without their knowledge or consent, and who at the time of acting was under contract with other clients who promised to pay him. The court can not consider the failure of Howe's clients to pay him as an evidence that Congress intended to have the Indians answer out of their estate for this default. Howe's petition will be dismissed.

Page on Contracts, volume 2, section 774, states with such precision the elements of an implied contract that we give the language in full:

"If the person for whom services of a kind usually made the subject of charge are rendered knows of their rendition, he is liable therefor, though he has made no express request, in the absence of special circumstances, negating his liability. If the person for whom the work is done knows that it is being done and that the person doing expects compensation from the person for whom it is done, and believes that such compensation will be made, and the latter does nothing to correct such impression, he is liable for the work thus done. In the absence of an express previous request it is necessary that the person for whom the work is done should know that it is being done, and further that it is being done for his benefit and also upon his liability. If A employs B to do certain work and B employs C to aid him therein, no implied contract between A and C exists, even if A knows that C is doing the work and that A will ultimately receive the benefit thereof, since A is liable over to B on his contract for the work done."

Ralston & Siddons were employed by Howe, and Howe agreed to pay them. They had no direct relationship with the Indians, and their appearance was without the Indians' knowledge or consent. This petition will also be dismissed.

We next reach the claims of James E. Arnold and Louis P. Hudson. They might each be disposed of very briefly, if it were not for the employment by them of Chester Howe, as heretofore noted. Arnold was not a lawyer, and hence incapable of performing professional services; Hudson was an attorney at law, but proves no professional service. Arnold's principal claim is predicated upon expenses incurred in the removal of the Indians. Claims of this character we decline to recognize, leaving Arnold dependent upon recovery to the services rendered for him by Howe. Arnold collected thousands of dollars from the Indians, and from the inception of his participation in Choctaw affairs to the close of the whole transaction profited perhaps more than all other claimants combined. He agreed to compensate Howe, and unquestionably had sufficient funds on hand to more than pay his attorney all his services were at least reasonably worth.

Hudson's petition follows Arnold's and will be dismissed.

The court in its findings announced May 17, 1915, in considering the claims of M. M. Lindly, John London, and Walter S. Field, found in Findings XLII and XLV a conclusive

394 ultimate fact respecting the same. On a motion for a new trial and to amend findings objection to this course was urgently urged, coupled with an insistence of a positive right to have a response to the claimants request for findings set forth in their briefs. We recognize the force of the contention, grant the request, eliminate our former Finding XLII, withdraw John London's name from Finding XLV, and respond to the requests in the new findings now made and substituted as Finding XLII.

The claim of the intervenors is a distinct entity—i. e., the claimed relationship must be sustained as sufficient to constitute an association within the meaning of the jurisdictional acts, and is attempted to be so connected that a recovery thereon enures to the individuals only on the theory of the worth of their combined efforts. While each file individual intervening petitions the allegations of the same disclose a claimed liability upon a concerted or copartnership effort each contributing in his own way a portion of the combined effort. It is novel, especially so in view of the fact that liability against the defendant Indians is asserted, not upon any contract or relationship with them direct, but wholly upon an independent agreement or agreements among themselves as to the division of fees between them by M. M. Lindly, who alone alleges an express contract with the defendants. Field says he is entitled to be paid because he collaborated with Lindly and Howe under an express contract between the trio and that any fees accruing should be divided. He further alleges an interest in all the services rendered by James E. Arnold, Louis P. Hudson, and John London under an agreement which the above-named persons are supposed to have made with Lindly, which, by the terms of the Lindly, Field, or Howe agreement, above mentioned, was to enure to the benefit of this copartnership, although it nowhere appears that Arnold, Hudson, or London were parties to the alleged written instrument creating the copartnership. Whatever interest they had in the alleged firm was never disclosed until

the institution of this suit, and not one of the intervenors, even under the band contract which is claimed as being in Lindly's name, except Lindly, connect themselves in the remotest way with the defendant Indians. Lindly and London attempt in oral testimony to corroborate Field in every important particular. The alleged written contract of copartnership between Field, Lindly, and Howe is attempted to be established by a copy of the same. The court discards it, for Howe was dead when it was first produced and his signature does not appear thereon, and no effort is made and does not appear to have ever been made to bind Arnold, Hudson, or London to the agreement in writing; and inasmuch as Arnold directly contradicts and Hudson prefers no claim thereunder, furnishing no proof thereof, this phase of the association is left alone upon the unsupported testimony of Field and Lindly. It would involve a discussion much too prolonged to analyze and point out in detail the manifest inconsistencies appearing in the testimony of these three intervenors. The record is replete with sustained charges of personal and professional misconduct. The court has been amazed at the strenuous effort put forth in an endeavor to erect a claim of sufficient stability to come within the limits of the jurisdictional acts. We have gleaned with the greatest care and after the most careful and deliberative consideration the facts set out in Finding XLII from a record so decidedly discredited and equivocal that we have been unwilling to attest a single
395 circumstance claimed unless corroborated by the testimony of living witnesses, other undisputed circumstances of the transaction, or confirmed by authentic written papers and the contemporaneous history of the whole transaction.

Lindly, Field, and London delayed an assertion of their individual and copartnership claims against the defendant Indians until long after all the other claimants had filed their petitions and much testimony taken in reference thereto. All were entirely familiar with the proceedings and knew the entire course of the pending controversy: Field particularly so, for he had personally represented three of the intervenors. This circumstance is obviously potential, its influence especially convincing, in giving weight to the voluminous testimony presented in support of the claims. Standing alone it is clearly susceptible of explanation. In the absence of such an explanation, however, it must incur the penalty of arousing doubts in reference to the proof of important events which, had the claims been promptly asserted, could have been easily proven by living witnesses, which now, through the lapse of time and the negligence of the claimants, depend upon secondary evidence incapable of being contradicted by the witnesses in behalf of diverse interest directly concerned because of their death.

The claim as predicated upon the alleged band or tribal contract is preposterous and absurd. No doubt Lindly and Field hoped to secure the execution of such a contract and doubtless drafted and delivered to London such an instrument in form. In order to prove its execution these claimants present a record wherein London himself so thoroughly discredits the whole transaction,

and is so fully corroborated by well-known and existing conditions among the Choctaw Indians in Mississippi that the whole attempt falls of its own weight.

To prove the contents of a lost instrument something more is required than merely a trace of its possession from one to another of the intervenors. The execution of the original can not be sustained by a simple recitation of individual opinion respecting its acknowledgment by those especially interested in sustaining the same. Not a single witness is produced to identify the signatures of the alleged parties thereto, when, before whom, and in what manner or even the capacity or authority of the officer in Mississippi before whom it is alleged to have been taken. The whole transaction is entirely too indefinite, too much is left to inference and conjecture, too many implausible and contradictory statements with reference thereto abound, to warrant the court in the light of the long history of the life and local conditions of the Choctaw Indians in Mississippi to attach weight to an alleged contract of this character.

From a legal aspect the claim must fail. Field, Lindly, and London can not by a copartnership agreement bind the defendant Indians to pay them for professional services which they never engaged them to perform. It is a startling proposition to contend that because Lindly, Arnold, or Hudson had a contract or contracts with the Mississippi Choctaw Indians, and in the performance of the same employed Field to assist them, that thereby the defendants incurred a liability to pay attorney fees to not only their contract attorneys but to all with whom they might thereafter associate.

396 Lindly, London, and Field never prepared, signed, or presented a brief to the committees of Congress over their own names. Aside from Field's activity in interviewing personally some individual Congressmen and United States Senators, for which service he could not recover, not one of them had the slightest direct connection with the defendants, except as to some individual contracts taken by Lindly and London. The Congress did not intend by the use of the term "associates" to extend a right to prefer a claim against the defendant Indians because perchance the personal relationship between Lindly, London, Field, and Chester A. Howe was congenial and agreeable. These three claimants can not by an agreement between themselves enhance the cost to the defendant Indians for professional services for the performance of which the Indians engaged one of their number to perform. Even if the band and copartnership contracts were fully proven and established, except as to the individual beneficiary thereunder, no possible right of action could accrue. The Indians did not employ the intervenors; they did not even suggest their employment or know of it. The activity by them manifestly was in pursuance of an understanding among the intervenors to which the Indians did not accede and with which they had no concern. It was an express agreement inter alia, by the terms of which Lindly agreed with the remaining intervenors to share with them a proportionate part of fees due him under his contracts with the Indians. The Congress was not making contracts for the intervenors or erecting a relationship out of which

every Indian attorney who voluntarily or otherwise connected himself with another actively and properly engaged in urging the defendants' claims before the various departments of the Government, could come in and claim a personal liability to him. The defendants were not exposed to such unlimited liability. The term "associates" must be read in connection with principles upon which we are to award judgment—"principles of quantum meruit." An associate to recover can not rest his case upon a mere contract of association with an attorney regularly employed by the defendants. He must do more; he must assume the burden of establishing a service under such circumstances and so connected with the defendants that the court can imply a contract upon the defendants' part to pay what those services are reasonably worth. We have heretofore discussed the question under individual contracts and sums expended for removal which we need not again repeat. Suffice it to say that not a single one of the intervenors have established the slightest vestige of authority to represent the defendant Indians, Field himself never having procured a contract in his own name of any kind or character; and the mere fact, if it was established, that he may have been engaged by Chester A. Howe to assist him professionally in his presentation of the case, could under no circumstances give him more than a claim against Howe for the payment thereof.

The claim of James S. Bounds is for services distinctly personal. Nothing that he did resulted in any permanent or temporary benefit to the Mississippi Choctaws as a class. His petition will be dismissed.

The petitions of William N. Vernon, Joseph W. Gillett, Choctaw-Chickasaw Lands & Development Co., J. J. Beckham, and David C. McCalib are all for personal services rendered for and on behalf of individual Choctaw Indians and all were rendered after the passage of the act of July, 1902. They had no part in the solution of the Mississippi Choctaws' claims to citizenship in the
397 Choctaw Nation. The whole transaction of each petitioner and intervenor mentioned above was entirely speculative and personal. All the above petitions are dismissed.

Thomas B. Sullivan and Joseph H. Neill have a claim against the estate of Charles F. Winton, but none against the defendants. Their petitions are dismissed.

The remaining petitions of Melvin D. Shaw, James O. Poole, and John W. Towles are all dismissed for lack of sufficient proof to sustain them.

It is so ordered.

CAMPBELL, *Chief Justice*, concurring:

By the jurisdictional acts the court is authorized and directed to adjudicate the claims of certain parties "against the Mississippi Choctaws."

Winton and associates filed their original petition duly verified by oath of Mr. Owen in which, at much length, they propound their claim as being one against the Mississippi Choctaws for service

"rendered not to one individual but to every individual who is enrolled and who has obtained the right to this great estate." Later and after the second jurisdictional act was passed Winton and his associates filed their amended petition, seeking among other things to avail themselves of the said second act, and reiterating that their claim is for services rendered to the Mississippi Choctaws "as a body." The general character of the services claimed for relates to matters of legislation affecting Mississippi Choctaws. For brevity the name of Winton will be used as referring to the parties named in the first of said acts. Chester A. Howe claims judgment for services of the same general nature as those alleged by Winton against all of the Mississippi Choctaws and also asks that judgments be rendered against individual Indians for additional sums expended in the matter of their removal. Other petitions and intervening petitions were filed. Some of these claim for services rendered, others for expenses incurred, and some claim for both, against individual Indians, and sometimes two or more claimants claim against the same Indians for expenses incurred on their behalf in different ways.

Broadly speaking, the Mississippi Choctaws are descendants of Choctaws who remained East after the Dancing Rabbit Creek treaty of 1830. More specifically, they are those Indians who, residing mostly in Mississippi, could claim citizenship in the Choctaw Nation by virtue of the provisions of said treaty.

For the purpose of this case they are those of the latter class who did claim citizenship and were enrolled in the Choctaw Nation as Mississippi Choctaws.

At the inception we are met with the question of the court's right to entertain the proceeding, and I do not fully concur with my brethren upon that question.

The second act is plainly amendatory of the first act, and as all claimants have filed petitions claiming under it the second act
398 may be looked to as covering the scope of the legislation under which the proceeding comes to this court and the results it contemplates.

The said acts refer to the "claims" of certain parties "against the Mississippi Choctaws." Manifestly they do not comprise all those persons who are referred to in the legislation or proposed legislation relative to Mississippi Choctaws then residents principally of the State of Mississippi.

Section 41 of the act of July 1, 1902, 32 Stats., 651, contains a description of Mississippi Choctaws and refers (1) to all persons who had been duly identified, and (2) to persons who might thereafter be identified under the terms of the act. It deals primarily with the question of identification as distinguished from the enrollment under which rights of citizenship or to property were to be secured. A Mississippi Choctaw could be identified as such and yet not secure property rights, because he must needs meet the conditions of enrollment. As a matter of fact many Mississippi Choctaws (more than 800) were identified who were never enrolled. They remained in Mississippi and did not take up settlement in the western country. The said section also requires that "all Mississippi Choctaws so en-

rolled by said commission shall be upon a separate roll." The jurisdictional acts must have reference to enrolled Mississippi Choctaws and not to the general description of Mississippi Choctaws who were eligible to identification under said section 41 because otherwise there would be subject to suit a number of Mississippi Choctaws who were not enrolled and did not secure any of the benefits of enrollment such as allotments of lands and the right of participation in other funds. Winton's petition makes them parties as follows:

"Names of the defendants in this proceeding against whom your petitioner is entitled to a judgment and a description of the lands upon which your petitioners are entitled to a lien in this proceeding will be found in the schedule showing lands selected by enrolled Mississippi Choctaws filed in this court," said schedule being properly identified as one transmitted to the court in answer to the court's call upon the Secretary of the Interior and described as a "List of Mississippi Choctaws who have selected land in allotment with their roll numbers and descriptions of their selections." The said schedule contains 1,580 names, of which 137 are listed as new-born Mississippi Choctaws, and the said petition avers: "The whole of which purports to be and is for the purposes of this petition admitted to be a complete roll of the Mississippi Choctaws to whom allotments of land in the Choctaw and Chickasaw Nation have been made and upon whose said allotments as described in said exhibit, your petitioners are entitled to and claim liens to secure the payment of such judgments as may be rendered in this cause."

It thus appears that he sues all of the Mississippi Choctaws who were enrolled and to whom allotments had been made, including in the list of defendants a number of minors who are listed as new born. Howe likewise claims against all of these, and further claims against some of the individuals less than all, while other claimants define their claims to be against one or more of said individuals.

The Attorney General, appearing by virtue of said acts, for the defendants, questions the court's jurisdiction upon several grounds, among others that the defendant Indians have not been
399 properly summoned and served with notice of the proceeding and that they are denied due process of law.

The jurisdictional acts do not purport to declare any liability of the Indians, who are defendants, to any of the parties named therein, and leave that question for the court's determination. The liability alleged by Winton is on account of services rendered and expenses incurred in or about the matter of legislation which they claim was the result of their labors and secured to said Indians a vast estate. Howe claims to have contributed by his efforts to said legislation, and other claimants seek to recover for expenses incurred in or about the removal of individual Indians from Mississippi or their subsistence pending their removal or after they had been removed. If all of these claims can be made and allowed it follows that judgments must be rendered (1) against all of the Mississippi Choctaws, (2) against some of them, less than all, (3) against some individuals in favor of two or more claimants.

According to the second jurisdictional act, which is amendatory

of the first, any judgments rendered by the court are to "be paid from any funds now or hereafter due such Choctaws as individuals by the United States," and a lien on the allotments of land to said Choctaws is declared for such judgments. The "funds" from which the judgments are to be paid can only arise out of a distribution of the fund arising from sales of unallotted lands or properties mentioned in the Atoka agreement and acts relative to the Choctaw-Chickasaw Nation in which Mississippi Choctaws are entitled to participate as provided by the statutes. There is no provision whereby any such distribution is to be made to the Mississippi Choctaws as a body or group independently of other Choctaw participants, but all allotments of land to Mississippi Choctaws have been in severalty to individuals, and their rights to participate in future distributions of funds are under present statutes individual rights. In other words, their participation or interest in tribal property of which the Government is trustee depends on the fact that the statutes recognize them as individually entitled to certain rights present or prospective. That these supposed rights may be altered by subsequent legislation need not be questioned here. Looking to the proposed method of paying said judgments, it is apparent that the funds mentioned are those which upon future distribution or apportionment of the trust estates or parts of it will fall to the share of the several individuals. For the funds to be "due from the United States" to the individuals implies a right of such individuals to demand it, and at that time the funds due will have become debts due them from the United States. And whereas now the Government is trustee of the funds and controls them, the trust, to the extent of the apportionment when made to the individuals, will then have ended, and the character of the holding as to them will have changed from that of a trustee for all the Choctaws to that of a debtor to the individuals. It is at that point that said act would divert from the Indians as individuals the payment of the amount found due and require its application to the payment of said judgments.

If the judgment liens so declared be effective, no reason is apparent why upon their rendition the judgment creditors may not proceed in any court in Oklahoma of competent jurisdiction to enforce said liens against the lands of the individual Indians to the extent, at 400 least, of the proportional part of such judgment due from each. *Shields vs. Thomas*, 18 How., 252, 264.

We have therefore a proceeding in which individual Indians are defendants having for its purpose the establishment of a liability against all or some of them and to the payment of which liability their individual properties are subjected. The "services rendered and expenses incurred" for which compensation is sought had their inception while the Indian defendants were yet in Mississippi. All the services in legislative matters were rendered prior to final enrollment, and the alleged "expenses incurred" were at different stages between the Indian's movements in Mississippi until his final removal West and his enrollment there. The Indian defendants, except the "new borns," were in Mississippi, and they were citizens of that State. As alleged in Winton's original petition, "The Mississippi Choctaws,

by the terms of the fourteenth article of the treaty of 1830, were made citizens of the United States and, of course, had a right to contract, as they were not Indians who were wards of the Government of the United States." They were citizens of Mississippi, and they subsequently became citizens of Oklahoma.

The petitioners thus suing them, as though by name and as individuals, upon a claim alleged to be against them as a group or body or class, and upon other claims confessedly against individuals, as such, under an act which contemplates a satisfaction of all judgments out of individual holdings, the proceeding in some of its phases has very much the form of personal actions against individual Indians.

It can not be doubted that Congress has "plenary authority over the tribal relations of the Indians." *Lone Wolf vs. Hitchcock*, 187 U. S., 526. "Congress has full power to legislate concerning the tribal property of the Indians." Nor is citizenship incompatible with the exercise by the General Government of its duties and powers of supervision. *Tiger vs. Western Investments Co.*, 221 U. S., 286, 311. The power of Congress to legislate with regard to such Indian matters "has always been deemed a political one, not subject to be controlled by the judicial department of the Government." *Lone Wolf case*, *supra*; *Tiger case*, *supra*. But the question is whether Congress has exercised its powers as a political one or has, by the shape the legislation has taken, made the question purely a judicial one. The acts do not declare or define any liability, individual or otherwise, of the Indians to any of the claimants. *Green vs. Menominee Indians*, 233 U. S., 558. The issues are between citizens of Oklahoma and, perhaps, other States on the one side, and Indian citizens of the United States and of Oklahoma on the other side. The Indians' individual holdings in the hands of their trustees must respond to the judgments rendered.

The question submitted to the court is whether there is any liability against the defendants or any of them to the claimants or any of them. The court, in order to proceed properly, must have the proper parties before it, and parties are entitled to proper notice of suits against them. "Citation before hearing; hearing, or an opportunity of being heard, before judgment are principles of the most primitive justice." The Indians who are sued except the new born were citizens of the United States when the alleged services were rendered and when the alleged expenses were incurred.

401 When they were enrolled and secured allotments of lands in severalty they did not cease to be citizens of the United States. Their "rights, privileges, and immunities" as citizens could not limit the powers of the General Government in dealing with them or their property rights in their new relation. Citizenship is not incompatible with the power of Congress to place limits on their power to control the property allotted to them. But has Congress the power to subject them to a proceeding in this court without service of process to determine whether they are liable for engagements, express or implied, entered into if at all with other citizens prior to the time when their new relation to the Government was assumed? Certainly those Mississippi Choctaws who were identified but never secured enroll-

ment could not be sued in this proceeding without personal service if suable in this court at all. Those who were enrolled could have been sued in State courts on their valid engagements entered into before their rights to citizenship were subordinated to the said control and could have been sued afterwards on said engagements. What they yielded up of their rights as such citizens when they were enrolled among the Choctaws were those rights of citizenship which were inconsistent with their changed relation. They could maintain all rights which as citizens they held and enjoyed that were consistent with their new position. If they had property interests in Mississippi, or if they had made contracts there, they could prosecute or defend suits relative thereto without in anywise affecting the Government's supervisory control over them or their property interests in Oklahoma, and being sued they could demand summons and service. Section 2103, Revised Statutes, provides that Indians not citizens may only contract when the contracts are approved by the commissioner. Shall the Mississippi Choctaws be denied the benefits of that statute because they were citizens when the alleged contracts were made and then when sued upon them or upon a quantum meruit based upon them be denied summons and service and the right of personal defense as though they are Indians and not citizens. To subject the said Indians to judgments such as the acts contemplate and to subject their funds or allotments to the payment of them without service of summons or voluntary appearance will, it seems to me, be a denial of due process.

If, on the other hand, the proceeding be not against the individual Indians as such, but is a proceeding of an equitable nature having for its purpose the reaching of trust funds, their sequestration, so to speak, in the hands of the trustee of them, then the court should not proceed in the absence from the record of the trustee. It is a familiar rule that to suits involving a trust estate the trustee is a necessary party. *O'Hara vs. McConnell*, 93 U. S., 150; *Shields vs. Barrow*, 17 How., 130; *Carey vs. Brown*, 92 U. S., 171. Especially is the rule applicable where the trustee is to be bound by the decree. *Cunningham vs. Macon R. R. Co.*, 109 U. S., 446; *McArthur vs. Scott*, 113 U. S., 340; *Kerrison vs. Stewart*, 93 U. S., 155. True, the controversy between the petitioners and the Indians may be said, in a sense, to be a separable controversy, but the manifest purpose of the act taken as a whole is to reach the amounts held by the trustee and subject them to the payment of the supposed liability.

In such case the relief asked for could not be granted without the trustee being before the court. *Thayer vs. Life Association Co.*, 112 U. S., 717.

The Government is trustee of the Choctaw-Chickasaw funds out of which it is proposed to pay any judgments rendered in this proceeding after their apportionment to the individual cestuis que trustent. If its guardianship over the Indians' interests in allotments of land continues it owes some duty of protection to them in the matter of the liens declared by the act, and certainly it should be in position to stay an enforcement of said liens against their individual holdings of land. This it could do if a party. But the United States can not

be sued without their consent and have not consented to be sued in this proceeding. A judgment rendered under said act can not be effectuated unless they are parties to the suit, because they can not be required to pay the judgments if any "out of funds now or hereafter due" from them except they be before the court. It may be added that the court are agreed that the United States can not be made defendants in this proceeding.

For these reasons I think the court should not proceed further in the case.

Assuming, however, that the court has jurisdiction and may proceed in the absence of the trustee, I concur in the result reached upon the merits.

The jurisdictional acts refer to "claims against the Mississippi Choctaws." Not only the language of the acts but the considerations above adverted to as to service upon the defendants rebut a conclusion that suits are authorized against each Mississippi Choctaw who may have made a contract with or for whom or in whose individual interest services were rendered or expenses incurred by a claimant. The acts do not contemplate that the parties named therein, "their associates or assigns," may propound in said proceeding claims alleged to be against one or a few Mississippi Choctaws who are sought to be charged with liability to such claimant and thereby convert the proceeding into a number of distinct and separable controversies between the several claimants and different Indians as defendants. Since the acts do not provide for personal summons to or service on the Indians but by their terms would charge the judgments rendered upon whatever may be due them as individuals from the United States, as well as further secure the payment of the judgments by a lien on lands owned by the Indians in severalty, the court is not justified in extending the controversy beyond the terms of the acts authorizing the proceeding. A claimant is not authorized to select particular Indians supposed to be liable to him and sue them in this proceeding. The claim must be "against the Mississippi Choctaws," and that means against all of them who were enrolled. This view requires the dismissal of the petitions filed herein of nearly all of the claimants, and intervening petitioners. It requires consideration of the claims of Winton and his associates, and perhaps a few others. An analysis of the case of Winton and his associates is all that is necessary to a proper understanding of the whole issue.

Their petition and amended petition allege that they have a claim against the Mississippi Choctaws "as a body." They make defendants all of the Mississippi Choctaws who were enrolled and had been allotted lands. By reference to the list of those enrolled as shown by the schedule furnished and filed in this court by the Secretary of the Interior, which list or schedule shows the separate names of the allottees and describes the lands allotted to them severally, the said petition as amended makes all of the enrolled Mississippi Choctaws parties defendant.

It is shown by their petition and proof that Mr. Winton's connection with Mississippi Choctaws commenced in 1896, at which time Mr. Owen was his sole associate. He secured a large number of con-

tracts of employment with individual Indians. It is alleged in the original petition that "they made contracts with Charles F. Winton and later with those associated with said Winton, particularly C. E. Daley. * * * A list of these contracts is respectfully submitted to the court as a basis of the employment of Charles F. Winton, his associates, and assigns."

The contracts made prior to the act of May 31, 1900, came under the condemnation of that statute because they provided for compensation to Winton of one-half interest in the net recovery and authorized him to locate and select allotments and to convey a one-half interest therein. It is alleged in the amended petition that they "contemplated not only obtaining the estate for the Mississippi Choctaws but contemplated their removal and establishment upon their allotments in the Choctaw and Chickasaw country."

After the said act had declared certain contracts void new contracts were taken by Winton, principally in the name of C. E. Daley, several hundred in number, which have been filed in this proceeding, and the general tenor and substance of them appears from a copy attached to the appendix to the court's findings in the case.

In the amended petition it is averred that "the jurisdictional act was sought by the said Winton and his associates solely to cover compensation for their claim for services rendered to the Mississippi Choctaws as a body in securing the legislation and the Executive action, which resulted in the ultimate establishment of the Mississippi Choctaws in the Choctaw and Chickasaw Nation."

The concluding clause of section 3 of the amended petition is that "this claim is limited to compensation for services in the actual securing of the estate."

The original petition is sworn to by Mr. Owen and the amended petition is signed by him, and they therefore may be taken as stating the claim of Winton and his associates. In addition, however, Mr. Owen, testifying in behalf of the said petitioners, states the claim of Winton and his associates as follows: "This suit brought under the jurisdictional act is not brought to enforce these contracts, but is brought to determine the measure of compensation of Winton and his associates for services rendered and expenses incurred in the matter of the claim of the Mississippi Choctaws for citizenship in the Choctaw Nation; is brought against the Mississippi Choctaws as a group and not as individuals, seeking compensation for services rendered them as a group and not for services rendered to them as individuals."

The claim of Winton and associates is therefore "for services rendered and expenses incurred" principally in work before the legislative body, its committees, and before administrative officers. That an attorney may be employed to present his client's case before Congress, or committees of Congress, or departmental officers is not to be doubted, and such an agreement, express or implied, for
404 purely professional service is valid. As is said by the Supreme Court in *Trist vs. Child*, 21 Wall., 441, 450: "Within this category are included drafting the petition to set forth the claim, attending to the taking of testimony, collecting facts, preparing argu-

ments and submitting them orally or in writing to a committee or other proper authority, and other services of like character. All these things are intended to reach only the reason of those sought to be influenced. They rest on the same principle of ethics as professional services rendered in a court of justice, and are no more exceptional."

Claiming a liability to them by the Mississippi Choctaws, whether "as a group," "a body," or "a class," or otherwise, it is incumbent on said claimants to show the facts upon which any liability rests. The general rule, where the suit is for professional services, is that to make out a case the plaintiff must show that the professional work was done and that he was employed by the defendants to do it. "It is not enough merely to prove that the work was performed, because it may have been without authority or may have been upon the employment of some person other than the defendants." *Wright vs. Fairbrother*, 81 Me., 39.

We have not been shown any statute which provides for any apportionment of the Choctaw funds to the Mississippi Choctaws as a group, body, or class. On the contrary, the right accorded by the statutes authorizing the enrollment of Choctaws living in Mississippi upon their removal to and residence in the Choctaw country is in each case an individual right. The law declares that "any Mississippi Choctaw duly identified, etc., shall have the right . . . to make settlement within the Choctaw-Chickasaw country, and on proof of the fact of bona fide settlement may be enrolled . . . as Choctaws entitled to allotment." Act of May 31, 1906, 31 Stat., 236. True, a separate roll of Mississippi Choctaws is required by section 41 of the supplemental Choctaw-Chickasaw agreement, 32 Stat., 641, but section 42 of that agreement provides that "when any such Mississippi Choctaw shall have in good faith continuously resided upon the lands of the Choctaw and Chickasaw Nations for a period of three years . . . he shall upon due proof . . . receive a patent for his allotment, as provided in the Atoka agreement, and he shall hold the lands allotted to him as provided in this agreement for citizens of the Choctaw and Chickasaw Nations." Section 43 of said agreement requires personal application for enrollment except that a father may apply for his minor children and a husband may apply for his wife.

To sustain the issue on their part Winton and associates urge that a large number of contracts were made by Winton and his associates with individual Mississippi Choctaws after June, 1896. The said petitioners claim that these contracts comprehended the interests of many more Mississippi Choctaws; that Winton went to Mississippi in 1896 and visited every Choctaw neighborhood, advising the Choctaws of their rights; that they prepared and caused to be presented a number of memorials to Congress setting forth the claim or rights of the Mississippi Choctaws; that they actively urged certain legislation favorable to the Mississippi Choctaws and opposed legislation as unfavorable to them at divers times between 1896 and 1906; that Winton addressed a circular letter to the Mississippi Choctaws wherein he informed them of his activities in their behalf; that the Mississippi Choctaws accepted the results of their

labors, and should be held to have impliedly, at least, agreed to pay the reasonable value of such services.

Do the facts establish the liability alleged, or any liability?

That Winton made a large number of contracts with individual Mississippi Choctaws is definitely shown. By the act of June 10, 1896, the United States Commissioner to the Five Civilized Tribes was instructed to make up a roll of members of the said five tribes with a view to the allotment of the land of said five tribes among the membership thereof; and directly after the passage of that act a contract, which was subsequently modified, was made between Mr. Winton and Mr. Owen. By the modified contract, dated July 24, 1896, it was provided that Winton should act as attorney in the Mississippi Choctaw cases under agreement with Mr. Owen; that the latter had a one-half interest in the contracts, and in the event of any accident to Winton he had full authority to take them up in place of Winton. Thereupon Winton proceeded to Mississippi, traveled throughout the State, and procured the contracts of a large number of persons—Mississippi Choctaws, beginning with Jack Amos. Some of these contracts were taken in his own name; some in the name of C. E. Daley, an attorney belonging to the firm of Logan, Desmond & Harley, of New York City, who was acting for and in behalf of Winton; some were taken in the name of Mr. Owen, but all of them occupied the same relation as if they had been made in the name of Winton. These contracts provided that Winton should receive one-half of the net recovery, and gave him a large measure of control over the property when secured.

The condition of the contracting Indians is stated in Winton's amended petition, as follows: "At the time of the making of the contracts by Charles F. Winton with the Mississippi Choctaws in 1896, the Mississippi Choctaws were extremely poor, working at manual labor, making fences, picking cotton, chopping wood, and having no landed estate or personal property worth mentioning. Their children could not attend schools provided for the whites; they were subject to a species of vassalage, not permitted to leave their employers' service while under indebtedness, which operated as a kind of peonage; were not allowed to vote or to exercise the rights accorded the citizens of Mississippi, and were otherwise in a state of helplessness, both financially and socially.

As above stated, after the passage of the act of May 31, 1900, providing "That all contracts or agreements looking to the sale or encumbrance in any way of the lands to be allotted to said Mississippi Choctaws shall be null and void," Winton proceeded to secure other new contracts.

All of the contracts were with individual Indians, and upon that theory it can be asserted that because a large number of said Indians made contracts with Winton or Daley other Indians not so contracting became affected or bound by them it is difficult to perceive. They did not constitute a tribe or band, and had no tribal organization or government. The State laws had looked to the abolishment of any tribal or Indian government among them. They were citizens, and by contracting with them Winton admitted their

power to contract. As late as February, 1906, as appears
406 from the contract between Mr. Owen and Mr. Boyd, one of the
associates named in Winton's petition, there is a reference to
said contracts as being with "various individual Mississippi Choctaws." If the Mississippi Choctaws were "in a state of helplessness,
both financially and socially," the fact but reinforces the conclusion
that those who did not undertake or contract with Winton and his
associates should not be held to be bound by the act of those who did
contract.

That Winton went among the Mississippi Choctaws is shown by
the findings; but it is not shown, except by the contracts they made,
who of them employed him or his associates to represent them.
Having the right of contract many could and did abstain from con-
tracting with him.

Nor can any implied undertaking by the Indians be raised up from
the fact that Winton prepared or presented memorials to Congress
in the name of the Mississippi Choctaws and that he sent out a circular
letter addressed to the Mississippi Choctaws containing an account
of his work.

The first memorial in December, 1893, is in the name of indi-
viduals who had employed Winton. The second in January, 1897,
purports on its face to be a petition for the enrollment of those whose
names are stated and they were clients of Winton. The third "Me-
morial and petition" September, 1897, purports to be on behalf of the
Mississippi Choctaws and is signed "C. F. Winton, counsel." It is
an argument upon the rights of the Mississippi Choctaws, the burden
of which is to show that said Indians were entitled to participate in
the Choctaw estate, except annuities, and remain in Mississippi and
in bold type asks, "Why should they be compelled at all to move to
the West?" However beneficial this view may have been to his
clients if adopted, it was contrary to the course of legislation adopted.

The fourth memorial, February, 1900, was a "petition of the Mis-
sissippi Choctaws" introduced in the House by Mr. Williams of Mis-
sissippi, and is signed, "The Mississippi Choctaws, by C. F. Winton,
Logan, Desmond & Harley, attorneys for petitioners." The peti-
tioners are described as "full-blood Choctaw Indians speaking the
Choctaw language, citizens of the Choctaw Nation, residing in Mis-
sissippi," and the petition renews the argument that they are en-
titled to remain in Mississippi and enjoy participation in the Choctaw
estate west. It concludes with a prayer that they be sent to the
courts "where this controversy may be settled without delay."

The memorial of April, 1900, is principally addressed to the ques-
tion that the law should provide more specifically for their enroll-
ment upon removal, and is signed, your humble servants, the Mis-
sissippi Choctaws, "Logan, Desmond & Harley, C. F. Winton, coun-
sel."

The last memorial, April, 1902, deals with a proposed change in
the statutes relative to identification and enrollment of Mississippi
Choctaws, and purports to be a petition of the Mississippi Choctaws,
being signed, "The Mississippi Choctaws, by C. F. Winton, Robt. L.
Owen, counsel." In addition to these petitions or memorials, it

appears that in 1896 Winton addressed a circular letter "to the Mississippi Choctaws," which is set out in the amended petition. Without stopping to examine the accuracy of his statements or to inquire whether under the principle announced in *Trist v. Child*, 21 Wall.,

441, compensation could be awarded, for "getting Senator 407 Walthall to pass a resolution through the Senate," or "soliciting Mr. Allen, of Mississippi, to prepare it," or because "by the help of Mr. Williams and Senator Walthall and Mr. Allen" an "item was put in the Indian appropriation act," it is sufficient to say that the proof does not show who of said people received said letter or to how many of them it was sent. Who of them did or could read it? If sent to all, it would not impose any liability upon its recipients, without more. The relation of attorney and client can not be created by the attorney notifying an indefinite number of people that he is working for legislation in their interest. Winton knew he had a large number of contracts which at that time had not been nullified by law, and it is reasonable to suppose he desired others. The statement in his letter of the importance of certain proof in the matter of enrollment and that he had secured a list of claimants who were descendants of fourteenth-article claimants which he would make available to his "clients as soon as practicable," can as reasonably be construed to be a suggestion to the Indians to become his "clients" as it can be said to have been a disinterested act in their behalf.

The memorials of "the Mississippi Choctaws" and Winton's said letter together do not create the relation of attorney and client between Winton and the Indians who did not employ him. Winton was retained by a number of Mississippi Choctaws under contracts which he was diligent to procure. That he represented his clients may be conceded. He was "counsel" or "attorney" for his clients and he had the right, as they had, to use the general designation of the Mississippi Choctaws in presenting his clients' case. But in so doing he did not become counsel for all of the Mississippi Choctaws. Those not contracting with him could be silent and not be bound to pay for his services or they could contract, as many did, with other attorneys. If an attorney employed by one concern to present before a committee of Congress an argument in favor of a higher tariff on certain manufactured articles should see fit to urge that "the manufacturers of this country" were in need of such legislation, would anybody than his client be bound to compensate him? If he notified them by circular or through the press that he intended to speak or act in behalf of all of them would "the infant industries" be saddled with his fee upon the principle of quantum meruit? I think not.

The theory advanced in argument that Winton is equitably entitled to compensation because of his efforts in behalf of the Mississippi Choctaws which are alleged to have resulted in securing to them a great estate is not tenable. There is no analogy between the estate belonging to Mississippi Choctaws or in which they are severally interested and a trust fund brought into a court for administration. The rights of Mississippi Choctaws in the Choctaw Nation and estate were not cognizable by any court, but were subjects of legisla-

tive action. To pay for services of attorneys rendered in or about the procuring of legislation deemed needful or desirable to said Indians upon such theory would be an undue extension of the trust-fund doctrine. When, through the efforts of a complaining party (who, generally speaking, sues on behalf of himself and all others similarly situated who will come in and bear their proportion of the expense of the litigation) a court of equity brings within its control a fund which the defendants are seeking to divert or in breach of a trust are attempting to withhold from those entitled to participate in it, the court may distribute the fund so realized.

408 Upon the principle that "a trust fund should bear the costs of its administration," it is allowable to pay out of the estate the costs and expenses of the complaining party under whose bill the court acquires jurisdiction and decrees relief. These costs and expenses include reasonable attorney's fees to the solicitor of the complainants. *Trustees v. Greenough*, 105 U. S., 527. But the solicitor's right to compensation is worked out through the equity of his client against the other parties who come in and participate in the fund, it being considered unjust that one complainant should bear personally all the expense of the litigation, the favorable termination of which enures to the benefit of all. Aside from the rights of his client, the solicitor, generally speaking, has no independent claim upon the trust fund, and the petition for his compensation is generally made in his client's name. In exceptional cases the solicitors may intervene in their own behalf. *Central Railroad & Banking Co. of Georgia v. Pettus*, 113 U. S., 116.

Whatever the service actually rendered was, Winton did not create a trust fund. It was already in existence and was under the management and control of the United States. They are still the trustees, and the trusteeship has not changed except to the extent that allotments in severalty may have changed it. At no time was the right of fourteenth article claimants under the treaty of 1830 to remove to and become citizens of the Choctaw Nation denied. The procedure which they should adopt to accomplish that end was long delayed, but the trust was never violated by the trustee. The efforts of Mississippi Choctaws through their counsel to establish a right for them to participate in the Choctaw estate and remain in Mississippi were not successful. Removal west was made a condition precedent to their participation in said estate, and the statutes recognized that condition. Any charge upon the trust estate must be made in the forum which administers it and not by a court which has no control over it.

In several cases under special jurisdictional acts this court has been called upon to determine the compensation which attorneys should receive, payable out of funds due Indians. In the *Ute Indians* case, 45 C. Cls., 440; 46 Ib., 225, the jurisdictional act directed the court to set apart just and reasonable compensation to the attorneys on behalf of the plaintiffs, and authorized an appearance therein by an attorney for the Indians. In the *Sisseton and Wahpeton Indians* case, 42 C. Cls., 416, the act provided for the ascertainment of reasonable attorneys' fees, to be paid to the attorneys for the Indians for

services rendered in said case. In the Eastern Cherokee Indians case, 40 C. Cls., 252, it was provided that the prosecution of the suit on the part of the Cherokees should be through attorneys employed by their proper authorities, their compensation for expenses and services rendered to be fixed by the Court of Claims upon the termination of the suit.

But the acts involved in those cases declared a liability, authorized the court to ascertain the amounts due, and directed their payment out of the fund in question.

In the Butler & Vale case, 43 C. Cls., 497, involving the claim of the Colville Indians, the court did not in terms hold that the act there considered defined a liability to the attorneys. The act is very different in terms from the acts involved in this case.

409 Any rights of Winton must therefore rest upon contract, express or implied, with the Mississippi Choctaws made defendants to this proceeding in his petition. No express contract is shown or claimed. None can be implied from the circumstances above referred to or relied upon by Winton. The employment by some Mississippi Choctaws was not an employment by all of the Mississippi Choctaws. Those who did not employ Winton had just the same privilege of employing other agents as his clients exercised in employing him, and many of them did so. The "new borns" employed no one, and could not do it, nor are they or their interests bound upon any theory of representation.

It remains to consider the contention that the Mississippi Choctaws accepted the benefits and fruits of Winton's labors in behalf of the Mississippi Choctaws, "secured great estates thereby," and "upon the principle of quantum meruit" should be held to have impliedly agreed or consented to pay therefor. Mississippi Choctaws became entitled to allotments in severalty and to participation in the Choctaw estate upon their being identified and enrolled. They must needs remove from Mississippi and take up a bona fide residence in the Choctaw-Chickasaw country. They were not required to act as a "body" or "group," but the act of identification, removal, and allotment called for individual action and volition. They applied for identification as individuals, and were identified as such; they were enrolled as individuals, and as individuals they received allotments of land in severalty. They were neither identified nor enrolled at one or the same time; nor were they allotted lands together. Each of them upon complying with the provisions of the statutes in that regard became a citizen of the Choctaw Nation entitled to all the rights, privileges, and immunities of Choctaw citizenship, except that they could not participate in Choctaw annuities. This exception probably furnished the occasion for the provision in the statute that the Mississippi Choctaws should be carried "upon a separate roll." Some few may have removed at their own expense; many were removed at the expense of the Government, which appropriated \$20,000 for that purpose. Many more were removed by and at the expense of divers persons who have intervened in this proceeding. A comparatively small number were removed to Indian Territory

through the instrumentality of Winton, and no claim is made by Winton and his associates for that expense.

The right to apply for identification, to be identified, to be enrolled, and ultimately to participate in the Choctaw estate, is one thing, involving different steps; and the possession and enjoyment of the estates granted is a different thing. It was the fact of removal to Indian Territory, the fact of being identified and subsequently enrolled, that actually fixed their status under the law. In these things Winton did not participate, and he makes no claim for any of them. He does, however, claim that he should be compensated for his services during a number of years while, as alleged, he was advocating or defending before the legislative body or its committees and others the rights of the Mississippi Choctaws. And without stopping at this point to question the accuracy of his claim, but merely stating it he claims that his efforts resulted in the legislation which made possible the enjoyment of a great estate and that, consequently, by accepting said estates the Mississippi Choctaws should be held to have assumed a liability to pay for said service upon the principle of quantum meruit.

As above suggested, it was as important to the said Indians that active measures be adopted to provide for their removal to and enrollment in the Choctaw country as it was to have legislation authorizing their removal. To hold that a people who, in the main, were destitute and ignorant of their rights, could by the mere act of exercising a legal right assume a liability, the extent and measure of which they could not know, would be unreasonable. A fatal defect in the contention lies in its failure to note the distinction between accepting the benefits of Winton's alleged labors and accepting the benefits of the law itself. Between his alleged labors and the enjoyment of said estate there were the necessary steps of identification, removal, and enrollment, and also the law itself by which benefits were secured. The statutes conferred the rights and extended the benefits of which the Indians availed themselves, and they did not by the mere act of exercising their legal rights become debtors to Winton.

It is probable that many of the Mississippi Choctaws who secured allotments never heard of Winton's alleged services. To be chargeable at all upon the theory of accepting the benefit of one's labors the party sought to be charged must be free to take them or not. There being no prior contract, express or implied, between the parties it can not be said that the acceptance and pursuit of rights accorded by the statutes are a voluntary acceptance of services rendered by an attorney in or about the enactment of the statutes. The party sought to be charged does not have to forego the benefits conferred by the law or accept them at the expense of a liability for services rendered prior to the enactment of the law. The acceptance by the Mississippi Choctaws of the right to identification, enrollment and allotments does not of itself and without more create any liability against them upon the principle of quantum meruit. It is a familiar principle that a man can not be forced to pay for what he has had no opportunity to reject. *Coleman v. United States*, 152 U. S., 96; *Boston v. Dist. of Columbia*, 19 C. Cls., 31; 9 Cyc. 252. The rule that

the party sought to be charged with taking the benefits of an attorney's services "must be free to take them or not" finds illustrations in *Parshley v. Church*, 146 N. Y., 583. In that case the plaintiff sued the church for professional services rendered. He had been employed by a minority of a board of trustees to present and prosecute charges against the pastor, and succeeded in his efforts in causing the pastor's suspension. Thereafter the church instituted proceedings to remove the pastor from the parsonage, and in resolutions authorizing such proceedings it was recited that the pastor had been removed under said charges. The plaintiff urged, among other things, that the church had thus accepted the result of his services and should pay for them, but the court held otherwise, upon the principle above stated.

Unless the relation of attorney and client, or some contractual relation existed between the defendant Indians and Winton at or before their enrollment, it can not be said to exist at all so far as this proceeding is concerned, and no such relation is shown. Meeting the conditions and complying with the requirements of the statutes, each of the Mississippi Choctaws was lawfully entitled to participate in the Choctaw estate without let or hindrance from those who claim to have promoted or suggested or aided in said legislation. As

411 each of them under the circumstances stated was free to act under the law a court can not place itself, so to speak, at the entrance to the said western country and say to said people that though they had a perfect legal right to enter they could only do so upon the payment to Winton of whatever sum the court might determine he deserved to receive from them for services performed prior to the enactment of the statute, or that having done so they assumed a liability. This would be like placing an embargo on the law. The statutes do not authorize such a limitation on the rights of the Indians, and the court can not place any. They accepted benefits authorized by the law.

Upon the said list of enrolled Mississippi Choctaws there are 1,578 individual names, and a description of the lands allotted to each. Winton had contracts with 696 of these, and he assisted in the removal of a small number of those with whom he contracted. In said list are the names of 137 enrolled under the terms of the statute as "new-borns." They were infants in fact, and many of them were probably not born when any of the services claimed for were performed. They constitute part of the Mississippi Choctaws who were enrolled and are named along with others as defendants in this proceeding. They did not and could not contract with Winton, and the mere act of accepting their patrimony could not raise up a liability on their part to Winton either as individuals or as members of a supposed group. But upon a claim asserted and maintained against the Mississippi Choctaws as a body or group these would have to be bound by the judgment, if any were rendered.

It is no answer to these views to say that Winton and his associates have received nothing for the services which they allege were responsible for the benefits secured to the Mississippi Choctaws. Winton's original idea was that he should contract with individual

Mississippi Choctaws, and he did so. That the contracts he made were subsequently declared void may have been his misfortune, but he changed their form and made other contracts, evidently recognizing that the surest way of creating the relation of attorney and client is by express contract. As to whose fault, if any one's, it was that more of this clients did not become enrolled and secure allotments of land, it is not necessary to inquire. More than one-third of the total enrollment had contracted with him in one or the other forms of contract exhibited in this proceeding. He had the right to contract with said people, and the law would furnish him a remedy to enforce valid undertakings. The facts, however, do not show a liability to him and his associates "against the Mississippi Choctaws" sued in this proceeding. The jurisdictional acts do not create any liability against them. *Green v. Menominee Indians*, 233 U. S., 558. It follows that the petitions should be dismissed.

412

IX. Judgment of the Court.

At a court of claims held in the City of Washington on the 29th day of May, A. D. 1916, judgment was ordered to be entered as follows:

The Court, upon due consideration of the premises, find in favor of the defendants, and do order, adjudge, and decree that the claimants, the Estate of Charles F. Winton, deceased, et al., are not entitled to recover and shall not recover any sum in this action from the defendants, Jack Amos et al.; and, that the several petitions and intervening petitions in this cause be dismissed.

BY THE COURT.

413 X. Applications of Intervenor, for, and Allowance of, Appeals.

Comes now the intervenor, J. S. Bounds, attorney in fact for T. A. Bounds, by W. W. Wright, his attorney of record, and notes an appeal to the Supreme Court of the United States, from the judgment of the Court entered herein on the 29th day of May, 1916, and respectfully prays the Court to allow said appeal.

W. W. WRIGHT,
Attorney of Record for J. S. Bounds.

GUION MILLER,
Of Counsel.

Filed August 25, 1916.

Allowed January 10, 1917.

BY THE COURT.

Comes now the intervenor John London, by M. S. Farmer, Jr., his attorney of record, and notes an appeal to the Supreme Court of the United States, from the judgment of the Court entered herein on the 29th day of May, 1916, and respectfully prays the Court to allow said appeal.

M. S. FARMER, JR.,
Attorney of Record for John London.

Filed August 25, 1916.

Allowed January 10, 1917.

BY THE COURT.

Come now the intervenors, Walter S. Field and Madison M. Lindly, by L. A. Pradt, their attorney of record, and note an appeal to the Supreme Court of the United States from the judgment of the Court of Claims entered herein on the 29th day of May, 1916, and they respectfully pray the Court to allow said appeal.

L. A. PRADT,
*Attorney for the Intervenor,
Walter S. Field and Madison M. Lindly.*

GUION MILLER,
Of Counsel.

Filed August 25, 1916.

Allowed January 10, 1917.

BY THE COURT.

414 Comes now the intervenor, J. J. Beckman, by W. W. Wright, his attorney of record, and notes an appeal to the Supreme Court of the United States, from the judgment of the Court entered herein on the 29th day of May, 1916, and respectfully prays the Court to allow said appeal.

W. W. WRIGHT,
Attorney of Record for J. J. Beckham.

GUION MILLER,
Of Counsel.

Filed August 25, 1916.

Allowed January 10, 1917.

BY THE COURT.

Comes now the intervenor William N. Vernon, by W. W. Wright, his attorney of record, and notes an appeal to the Supreme Court of the United States, from the judgment of the Court entered herein

on the 29th day of May, 1916, and respectfully prays the Court to allow said appeal.

W. W. WRIGHT,

Attorney of Record for William N. Vernon.

GUION MILLER,
Of Counsel.

Filed August 25, 1916.

Allowed January 10, 1917.
BY THE COURT.

Comes now the petitioner, Katie A. Howe, executrix of the estate of Chester Howe, deceased, by W. W. Wright, her attorney of record, and notes an appeal to the Supreme Court of the United States from the judgment of the Court of Claims entered herein on the 29th day of May, 1916, and respectfully prays the Court to allow said appeal.

W. W. WRIGHT,

*Attorney for Petitioner, Katie A. Howe,
Executrix of Chester Howe, Dec'd.*

GUION MILLER,
Of Counsel.

Filed August 25, 1916.

Allowed January 10, 1917.
BY THE COURT.

415 XI. *History of Proceedings After Entry of Judgment.*

On July 25, 1916, the claimant filed a motion for a new trial and a rehearing.

On July 25, 1916, the claimant filed a motion to extend the time for the filing of motion for a new trial, with brief in support thereof.

On July 26, 1916, the motion to extend time six months was overruled with the following indorsement: "A motion which does not comply fully with the rules having been made by claimants they are allowed until the 1st Monday in October, 1916, in which to amend their motion for a new trial and file brief as required by the rules."

On August 4, 1916, the defendants filed objections to the claimant's motion for a new trial and extension of time for filing brief.

On September 30, 1916, a motion was made for leave to file a motion for a new trial in re Walter S. Field, which was allowed by the Court Oct. 23, 1916, with the following indorsement: "Said motion and brief in support thereof to be filed on or before December 1, 1916."

On November 28, 1916, the said Field filed a motion for a new trial with brief in support thereof.

On December 11, 1916, the court overruled the motion of the claimant, filed July 25, 1916, and the motion of Walter S. Field, intervenor, filed November 28, 1916.

On January 8, 1917, a motion was filed for action on bill of exceptions filed by intervenors Walter S. Field and Madison M. Lindly.

On January 8, 1917, the claimant filed a motion under
416 Rule 90 for leave to file a motion to amend the findings of fact, and a request for findings of fact on certain questions of fact. This motion was overruled by the Court on January 29, 1917, with an opinion by Booth, J., which is as follows:

417 XII. *Opinion of the Court by Booth, J., on Motion Under Rule 90 for Leave to File Motion to Amend the Findings of Fact and a Request for Findings of Fact on Certain Questions of Fact.*

Filed Jan. 29, 1917.

Court of Claims of the United States.

No. 29821.

(Decided January 29, 1917.)

THE ESTATE OF CHARLES F. WINTON, Deceased, and Others,

v.

JACK AMOS and Others, Known as the "Mississippi Choctaws."

BOOTH, Judge, delivered the opinion of the court:

On Monday, January 8, 1917, in open court the attorney for the estate of Charles F. Winton, deceased, presented a motion entitled, "Motion under rule 90 for leave to file motion to amend the findings of fact and a request for findings of fact on certain questions of fact." Accompanying said motion was a short typewritten brief in which it is contended that the court erred in finding certain facts which claimant's motion seeks to strike from the record, and likewise erred in its refusal to find certain facts material to the issues presented, the purpose of the pleadings being frankly avowed by a citation of the case of Driscoll v. United States, 131 U. S., Appendix CLIX.

In a proceeding so extraordinary as the above the court would be fully warranted in overruling the motion without comment. In view of the importance of the litigation and lest some misapprehension might possibly obtain that the record in the case had not been the subject of consideration and deliberation during the more than ten years the same has been pending before the court, we

deem it an added judicial duty to carefully state the reasons which impel the court to deny the motion.

The first petition of claimants in the case was filed on October 11, 1906, some few months after the passage of the first jurisdictional act. Between this date and April 10, 1913, when claimants filed their first request for findings of fact and brief in support thereof, innumerable motions intervened, all looking toward the preparation of the record in the case. Several volumes of testimony were adduced and printed. In the request for findings embodied in the brief of April 10, 1913, nine specific requests were made, covering in detail the services of Mr. Owen before all the public tribunals engaged in or within whose jurisdiction the subject-matter in controversy had been considered. The case was set for trial by the court on May 27, 1913, the date being subsequently changed upon the insistence of the attorneys representing conflicting interests to the first Tuesday of the October term, 1913. On October 14, 1913, the argument of the case began and continued until October 21, 1913, one whole week.

On December 7, 1914, the court, after diligently searching through a record of thousands of pages of testimony and briefs, in order to facilitate the disposition of the case as well as to specifically call attention to its conclusion in reference to the findings of fact and thereby set at rest the multitudinous objections and cross-objections found in the respective contentions, prepared at length and in great detail tentative findings of fact which were announced under the following order:

"Forty-five days from this date will be allowed to all interested parties to file objections to findings and briefs. Thirty days thereafter will be allowed the defendants and all other parties interested to reply thereto, and the case is set for a hearing on Tuesday, February 23, 1915."

The tentative findings made covered the issues then presented and embraced, as the court then and now believes, a very careful consideration of every single request for findings made by either the claimants herein or any of the numerous intervenors, it being the express intention of the court in so doing to give to every litigant ample time and opportunity to assail the findings made and suggest errors of commission and omission. Forty-three distinct and separate findings were submitted and so arranged as to state the case as the court viewed it upon the issue of fact. On January 21, 1915, claimants filed their objections to said findings, supported by an exhaustive brief. Objection was specifically made to all the tentative findings respecting the claim of Winton and associates, except findings 1, 2, 8, 9, 11, 13, 14, 16, 17, and 31. With these findings the claimants seemed to be content. On February 20, 1915, claimants herein filed an exhaustive reply brief to the defendants' objections to the tentative findings and vigorously contested every contention advanced, the claimants insisting upon additional findings as well as objecting to findings made. On the date stated in the court's order of December 7, 1914, a lengthy oral argument was heard in support of the objections filed by each litigant and the claimants

herein were given ample time in which to present their objections and argument.

On May 17, 1915, the court's first opinion was announced. The tentative findings had been modified in some respects and the court reviewed at length the issues of fact and law involved in the case. On August 9, 1915, the claimants filed a written motion for a new trial and to amend findings of fact found by the court in its opinion and findings of May 17, 1915. This motion to amend the findings and conclusions of law filed on August 9, 1915, by claimants, was accompanied with the request that the motion be ordered to the law calendar. The said motion and the brief and argument in support thereof comprised over 100 pages of printed matter.

419 The court on February 1, 1916, again heard an oral argument from claimants as well as all intervenors on their respective motions for amendment of findings and for a new trial. This argument consumed four full days of the court's term, being finally concluded on February 5, 1916. On the 29th of May following the court allowed in part and overruled in part the respective motions to amend findings, modified in some particulars its written opinion, in which the Chief Justice concurred in a separate written opinion, adhering, however, to its first determination respecting the legal issues involved.

On July 25, 1916, the claimants' attorney filed two typewritten motions, the first entitled "Claimants' motion for a new trial and a rehearing," and was in the following language:

"Comes now the plaintiffs and moves the court to grant a new trial or rehearing herein, and as reason therefor allege error of fact and error of law and newly discovered evidence in this: As to the newly discovered evidence, one Tams Bixby, who has heretofore testified in this case, has made a statement in a letter addressed to the Honorable Henry F. Ashurst, chairman of the Committee on Indian Affairs of the United States Senate, under date of September 23, 1915, of great importance to the interests of these plaintiffs and leads them to believe that said statement, together with such evidence as Mr. Bixby no doubt can give upon proper examination in the light of said statement, would cause the court to materially change the findings of fact in the particulars mentioned in Mr. Bixby's said letter of September 23, 1915. Said letter is printed commencing on page 448 of the hearings before the Committee on Indian Affairs of the United States Senate, 64th Congress, 1st session, on H. R. 10,385, being the Indian appropriation bill for the fiscal year ending June 30, 1917, and it is respectfully referred to and prayed to be made and considered a part hereof.

"The errors of fact and errors of law will be more fully and definitely pointed out in a brief to be filed in support hereof, in accordance with a motion this day made for leave to extend the time for the filing of a brief in support of this motion."

The second motion, entitled "Plaintiffs' motion to extend the time for the filing of motion for a new trial and brief in support thereof," was in the following words:

"Comes now the plaintiffs and moves the court to extend the time

six months beyond the time allowed for the filing of a motion for a new trial and brief in support thereof, as required and provided for in rules 90 to 95, inclusive, for the reason that it is impossible to comply with the terms of said rules in the sixty days therein allowed, owing to the fact that the attorney for the plaintiffs has not had time to confer with his clients, particularly the plaintiff Owen and Mr. Winton's administrator."

The court being then in recess, the motion went to the Chief Justice, in accordance with the rules of the court, and the following entry was made by him upon the motion:

"The motion to extend six months is overruled. A motion which does not comply fully with the rules having been made by the claimants, they are allowed until the first Monday in 420 October, 1916, in which to amend their motion for a new trial and file brief as required by the rules."

The docket entries covering this matter show that on July 25, 1916, the same day the motion was filed, a copy of the same was duly served upon the defendants, and thereafter, on August 4, 1916, the defendants filed their brief in opposition thereto. The court was in session on the first Monday in October, 1916. The claimants filed no brief, did not appear in court, did not ask any further time, and took no steps to comply with the rules of the court. The motion was finally overruled by the court on December 11, 1916, nearly five months after it had been filed.

Rules 94 and 95 of the court provide:

"94. A motion by the claimant upon the ground of newly discovered evidence will not be entertained unless it appear therein that the newly discovered evidence came to the knowledge of the claimant, his attorney of record or counsel, after the trial and before the motion was made; that it was not for want of due diligence that it did not sooner come to his knowledge; that it is so material that it would probably produce a different judgment if the new trial were granted, and that it is not cumulative.

"Such motion must be accompanied by the affidavit of the claimant or his attorney of record, setting forth:

"First. The facts in detail which the claimant expects to be able to prove, and whether the same are to be proved by witnesses or by documentary evidence.

"Second. The name, occupation, and residence of each and every witness whom it is proposed to call to prove said facts.

"Third. That the said facts were unknown to either the claimant or his attorney of record, and, if other counsel was employed at the trial, were unknown to such counsel until after the close of the trial.

"Fourth. The reasons why the claimant, his attorney of record, or counsel could not have discovered said evidence before the trial by due diligence.

"95. Motions for a new trial must also be accompanied by the brief of the moving party, a copy of which must be served upon the opposing party, who may file his brief in response thereto. The motion will be considered by the judges in conference upon such

briefs and affidavits, if any, and will there be decided or sent to the law calendar for argument."

From this record alone the court is fully warranted in not only overruling the request but the motion made as well. The claimant, for reasons undisclosed to the court, failed to avail himself of a privilege extended by the rules, notwithstanding he was given the unusual period of nearly five months so to do.

The motion itself is, however, upon the merits, devoid of favorable consideration. Mr. Tams Bixby was examined by the defendants as a witness in this case on September 8, 1908. The then chief attorney for the claimants was present in person at the taking of said deposition and cross-examined the witness in great detail. In fact, the testimony of Mr. Bixby consumes 30 pages of the printed

record in this case, most of which is cross-examination. The witness was vigorously interrogated as to the position of the Dawes Commission from every possible angle of this controversy, and a careful examination of his testimony must lead to the inevitable conclusion that no material fact escaped being called to his attention.

Aside from the very obvious fact that the court's findings show specifically the proceedings of the Dawes Commission and their attitude toward the enrollment of the Mississippi Choctaw Indians, it is to be especially noticed that claimants' attorney now insists upon a reexamination of the witness because of the belated information coming to him at least on or before July 25, 1916, in a letter written by Mr. Bixby on September 23, 1915. This case was argued upon a motion for a new trial and to amend findings February 1, 1916, about four months after the letter came into existence, and absolutely no valid reason has been assigned for the failure to produce it then. The letter itself would, of course, be inadmissible, but, granting arguendo that it is, the court in considering the same can find no fact stated which would in any manner disturb the judgment rendered. The Dawes Commission was charged with certain duties by acts of Congress, its jurisdiction was circumscribed and its duties defined by law, and whenever, as in this case fully exemplified, it failed in detecting the intent of Congress as expressed in the acts governing the commission, supplementary legislation corrected the error and righted the wrong. Mr. Bixby's individual opinion is in nowise in issue, and his official conduct must be judged from the official reports of the commission of which he was a single member; these we have set forth in detail.

The motion was overruled without argument, as the docket entries attest. It in no important particular complied with the well-known rules of the court, and was otherwise devoid of merit. This case unfortunately intervenes to halt important proceedings connected with the management and control of the Indian lands allotted. It has been considered, as before observed, for more than 10 years. If litigation is ever to close and causes ever to be finally determined, belated motions tending toward interminable delay must at least comply with the rules of the court, themselves liberal and obviously just, before the court would be justified in reopening a record already

extending to thousands of pages of printed matter. The defendants filed a brief in opposition thereto; the claimants never afforded the court any further enlightenment than the brief facts set forth in the typewritten motions herein reproduced.

Treating the motion now at issue, without first going into the specific requests made, we must first pause to consider the same from the standpoint of substantive right, keeping in view the present state of the record, the complications which must follow, the rules and practice of the court, and what, if any, injustice follows from its denial, recognizing our right to grant or deny the same in accord with an exercise of sound judicial discretion with respect thereto.

The claimants, in their three preceding requests for findings of fact, formulated the same in narrative form; this is the first motion wherein alternative requests for finding as to specific facts is found.

422 Heretofore, then, it is apparent from the record, claimants have been content to follow the usual and ordinary forms of pleading employed in the presentation of cases to the court. It is likewise obvious from the express allegations of the motion that the requests now made have not heretofore been requested in either narrative or alternative form, and the reason for this omission does not appear.

Again, it is pertinent to observe that the last opinion of the court in the case was announced May 29, 1916, and it was not until January 8, 1917, that this motion was filed, although the court has been in session, with the judges present, since the first Monday in October, 1916, and the clerk's office is open every day, except legal holidays, for the reception and filing of motions.

The case itself from the pleadings and record concerns not alone the rights of the claimants making the present motion but at least eighteen other claimants, each preferring a claim for compensation for personal services rendered the same Indians, many of whom have taken an appeal from the judgment of the court to the Supreme Court, and the record therein is now in course of preparation. The case therefore presents a somewhat anomalous condition in that a large number of the parties have applied for appeals to the Supreme Court, and these applications were granted on December 11, 1916, while the claimants herein by their motions herein filed after the appeals were allowed would, if the motions be granted, keep the case in this court, and thus as to some the case would be in the Supreme Court and as to others the same case would be in this court. In the event of permitting the allowance of this motion, notice must be served upon each intervenor and the defendants as well, time must be extended for the filing of additional briefs, and an oral argument, despite the fact that the claimants have stated they did not desire one, must be had and the final disposition of the case postponed for an indefinite period. The case, as above set forth, has been pending for ten years, and the docket entries disclose a list of motions filed running well into the hundreds. If litigation is to reach a finality within a reasonable length of time and an argument going in support of such a contention is at all available, it is extremely pronounced and effective in the present instance. In ordi-

nary court procedure it is quite unusual to persistently move for a rehearing after a cause has been finally decided upon two previous motions for a new trial.

Rule 90 of the Court of Claims is consonant with the usual and ordinary court rules designed to regulate court practice and promptly dispatch court business. It provides in substance that motions for a new trial shall be filed within 60 days from the date of judgment and expressly limits the number of said motions except by leave of court. The exception in the rule is neither extraordinary nor difficult to understand. It was never intended, and has never been so construed, as at all permissive of innumerable motions designed to bring in review for a second, third, fourth, or fifth time the findings of the court upon allegations of error made by the parties and in most instances suggested by the findings theretofore made. The reservation was inserted for the express purpose of enabling litigants to point out some obvious error, some substantial omission which they may earnestly believe would affect the decision of the court or redound to their benefit. It is not susceptible of a contention

423 that it is available to bring again in review the whole case in all its aspects, or to be used as an instrumentality to procure another argument of the whole controversy upon the same record. Ample opportunity is afforded both claimants and defendants to present their requests for findings and to object to and propose amendments to the facts found by the rules of this court. There is no rule of the court which in any manner restricts or denies the rights of litigants on appeal to the Supreme Court or works to their injury in making up the record in the case. Nineteen court days upon various occasions and in response to various requests were consumed in the oral presentation of this case. To even approximate the volume of motions and papers filed herein would be almost impossible. Suffice it to say that we have no hesitancy in averring that the record shows that of all the involved and tedious cases submitted to the court, no parties litigant have been accorded a wider latitude in pleadings and motions or been given a more careful and patient consideration of the innumerable conflicting interests than in the present cause.

The rules of the Supreme Court relative to findings of the Court of Claims are to be found on page VII of the 9th Wallace Reports. Rule IV adopted by the Supreme Court provides that the Court of Claims shall make and file their findings of fact and their conclusions of law in open court before or at the time they enter judgment in the case. Rule V provides as follows:

"In every such case, each party, at such time before trial, and in such form as the court may prescribe, shall submit to it a request to find all the facts which the party considers proven and deems material to the due presentation of the case in the findings of fact."

These rules were made at the December term, 1869, of the Supreme Court and have been followed since.

In *United States v. Adams*, 9 Wall., 661, the appellants resorted to certiorari in an effort to bring certain facts alleged to be part of the record in this court before the Supreme Court, the Court of Claims

having omitted to find them. The Supreme Court denied the writ, but issued an order remanding the case with instructions to find whether or not certain facts were proven in the record. In deciding the case the court said:

"But we can not give the Court of Claims any directions as to what finding it shall make, or how it shall proceed to make up its findings on the points in question. If that court should refuse, with the proper evidence before it, to find a material fact desired by either of the parties, the proper remedy would be to make a request that such finding be made, and to except in case of refusal. Perhaps an additional rule on the subject would make the rights of the parties and the duty of the court less ambiguous than they now are." See rule, *supra*.

In *Mahan v. United States* (14 Wall., 109) the appellant in the Supreme Court sought to invoke the rules above set forth in an effort to have the evidence in the Court of Claims brought before the Supreme Court for review, predicated the contention upon a refusal of the Court of Claims to find a specific fact in the specific way requested.

The court said:

424 "But it was never supposed that the party would ask or the court must find the fact to be as the party claimed it, and if they did not that he could, for that reason, bring the whole testimony here to show that he was right.

"The rule does say that if the Court of Claims refuses to find as prayed the prayer and refusal must be made part of the record. The remedial purpose of this rule is that when a party has, in writing, indicated a specific question of fact on which he desires the Court of Claims to make a finding, and the court has neglected or refused to do so, this court may be able to determine whether the question is one so necessary to the decision of the case that it will send it back for such finding.

"In the present case the Court of Claims did make a very explicit finding on the question of fact presented by the request of plaintiff, and this is all the rule required, though the finding is contrary to her averment."

In *United States vs. Driscoll*, *supra*, the question of proper procedure under the foregoing rules was directly passed upon, and in refusing an order of remand the Supreme Court said:

"The object is to present the question here as upon an exception to the ruling of the court below in respect to the materiality of the fact. For that purpose it must have been submitted to the court in a written request, as provided by the rule. Nothing of the kind appears here. While other requests were made, this was not, and the record upon its face does not show that the court has omitted to pass upon any fact necessary to the decision of the case."

From the view point of established rules both in the Supreme Court and in this court, and in the light of the decisions of the Supreme Court cited, it is manifest that the motion herein could be overruled for several reasons: First, because it comes too late; second, it seeks in some phases to present new issues; third, it is not supported by briefs; and fourth, no reason is assigned for failure to comply with

the rule. But there is an additional reason. It is to be noted that the claimants' present request is "for findings of facts on certain questions of fact." Departing from the form in which requests are usually made—under the rules of the court, in narrative form—the requests in each instance are put in interrogative form—"whether or not." The purpose of a request for findings is to find the facts material and pertinent to the issue. It certainly can not be said to be equally pertinent and material whether the answer be in the affirmative or the negative, because if it be not a fact then its importance at once disappears. As is very well stated by the attorney for the claimants herein in one of his briefs, it is rarely proper for the court to find a "negative fact." Without regard, however, to that phase of the matter, the form in which these requests are propounded are not without some precedent. In the case of Union Pacific Ry. Co. v. United States, 116 U. S., 154, requests for findings made in substantially the same form as the one stated in the present motion were passed upon by the Supreme Court. A material difference, however, between the request here made and that in the case just referred to is that in that case the requests were made on or before

425 the trial and conformed in that respect to the rule of the Supreme Court. The present motion does not conform to the rule of the Supreme Court in that it is made after the trial and after the court has decided the case, as above stated. In the Union Pacific Ry. case after the requests had been made in substantially the same form as those now under consideration the case went to the Supreme Court, and a motion was there made by the claimant to require the Court of Claims to send up the evidence or to specifically find on certain requests for findings made by one of the parties and not passed upon specifically and in detail by the court. In refusing said motion upon that contention of the claimant the Supreme Court said:

"The special findings which were requested and refused related to mere incidental facts which amounted only to evidence, and were therefore inadmissible as a part of the record to be sent here. They were in reality nothing more than requests for a finding of what the evidence was. The parties seem to have followed the suggestion on the former appeal, and, after looking over the entire field of service they brought in everything which, in their opinion, could be of use to the court in determining what would be a reasonable compensation for the services rendered, subject to the requirement of the statute that it should not be more than was paid to private parties for the same kind of service. The question to be determined was one of fact as much so as the amount of recovery in any action quantum meruit. A conclusion could only be reached by considering all the testimony, weighing the facts, and estimating their comparative value as evidence. This presented in no just sense a question of law. Every fact that was proven according to the motion was simply evidence, and as evidence had performed its entire office when the facts were found. It has no place in the record which is to come here for review."

Again, in McClure v. United States, 116 U. S., 145, a motion was

made to order up the evidence from the Court of Claims, or, in the alternative, to direct the court to make specific findings of fact. In that case it was said (p. 151):

"The statement of facts on which this court will inquire, if there is or is not error in the application of the law to them, is a statement of the ultimate facts or propositions which the evidence is intended to establish, and not the evidence on which those ultimate facts are supposed to rest. * * * The statement must be sufficient in itself, without inferences, or comparisons, or balancing of testimony, or weighing evidence, to justify the application of the legal principles which must determine the case. It must leave none of the functions of a jury to be discharged by this court, but must have all the sufficiency, fullness, and perspicuity of a special verdict. If it requires the court to weigh conflicting testimony, or to balance admitted facts, and deduce from these the propositions of fact on which alone a legal conclusion can rest, then it is not such a statement as this court can act upon."

See also the court's references to the case of *United States v. Pugh*, 99 U. S., 265, and *The Francis Wright*, 105 U. S., 381, 387. Referring to the last-named case the Supreme Court said:

"But in the *Francis Wright*, 105 U. S., 381, 387, where the question was as to the kind of facts the court could be required to
426 put in its findings, we said it did not include 'mere incidental facts which only amount to evidence bearing on the ultimate facts of the case.' Questions depending on the weight of evidence must be conclusively settled below."

In relation to the question of substantive right and the denial of justice, which go direct to the question of the exercise of sound judicial discretion, recurrence must be had to the opinions wherein the purpose and intent of the rules sought to be involved fully appear. It is manifest from what the Supreme Court said in each of the opinions cited that the purpose of the rules is to preserve an exception in behalf of litigants in the event this court refuses, "with the proper evidence before it, to find a material fact desired by either of the parties," the remedial purpose of the rule being to enable the Supreme Court to determine whether the omitted question of fact is one so necessary to the decision of the case that it will be remanded for that purpose. The issue of fact presented by the record in this case lies within a very narrow compass, notwithstanding the volume of the record. The suit is to recover from the defendant Indians compensation for services rendered in their behalf in the matter of their claim to citizenship in the Choctaw Nation, the court being directed by the special grants of jurisdiction to render judgment upon the principles of quantum meruit. Confining ourselves at present to the claimant's petition alone, what facts must be established to bring them within the act? The court need not answer the inquiry in any other manner than to refer to the record made by the claimants themselves. With most commendable detail, as the findings of the court show, the claimants made up a record, disclosing beyond doubt that a large number of individual Mississippi Choctaw Indians by written contracts of employment engaged the claimants

to advocate their cause, speaking broadly, at any time and any place where it might be of service to them in securing a claimed treaty right. Testimony was adduced relative to the character of service rendered and when and where it was rendered, what legislation was advocated, and what was passed, and other testimony deemed by the parties necessary and proper to sustain their contentions.

At least as early as March 1, 1907, other claimants filed motions for leave to intervene in the case, themselves claiming rights under the jurisdictional act, a claim so persistent that Congress on May 29, 1908, passed a second jurisdictional act enlarging the scope of the grant and including by particular names as well as under the general term "associates" a large number of persons. Thereafter, in making up the record under their individual petitions, an acute, prolonged, and exceedingly disputatious record of facts confronted this court, not now speaking of the great volume of testimony introduced by the defendants contradicting the right of these claimants and each intervenor. From this record of conflicting testimony the court is charged by a positive rule of the Supreme Court to make up its findings "in the nature of a special verdict, but not the evidence establishing them." In the discharge of this duty we attempted to follow the common law rules of evidence and to find as near as possible the ultimate facts reached after a careful analysis of the evidence
427 in the case. The facts as found are not in all respects as the claimants averred them to be, nor are we required to find specifically as to a claimant's averment in this respect. They are the special verdict of this court sitting as a jury. The motion now under discussion challenges this verdict, not by citing here and there an omission of a material fact, but by a series of inquiries it seeks to sustain a contention that the facts should have been found exactly as the claimants averred them to be.

If from the findings made by the court the Supreme Court on appeal finds the record insufficient because of the omission or refusal to find material facts, to review the contentions of the respective parties, it has been the rule of the court of its own or in response to claimants' motion to promptly remand the case. This indeed is the full import and meaning of the rules. The court has found the facts as it believes them to be, and has further determined that in its judgment all material questions of fact have been found, and this result has been reached after repeated motions for new trial. The Supreme Court has never remanded a case for additional findings of fact solely because of the allegations of the parties that this court has misconceived the record, misjudged the testimony, and arrived at a verdict contrary to their view of the facts. Under our jurisdiction, sitting as a jury in this respect, the duty under the law is peculiarly ours of weighing and analyzing the testimony, according to it the probative effect to which we believe it entitled, and then expressing our verdict in written findings of fact. If in the course of this proceeding we omit material facts the way is open to correct the error, but the verdict of the court can only be challenged by a motion for a new trial.

The two cases cited are directly apposite, for in each instance requests were made before the trial of the case which complied in

every particular with the rules, whereas in this instance we are asked to consider a very tardy motion, embodying the consideration of a record of testimony heretofore examined, reexamined, and carefully analyzed.

As a further means of ascertaining the issue now raised as to the omission of material findings, we find it indispensable to examine closely the specific requests now for the first time propounded. Before doing so, however, a general observation as to some of the language used in the requests is necessary. It is asked and frequently repeated whether or not the claimants "as representatives of the Mississippi Choctaws" did not do so and so "in behalf of the Mississippi Choctaws." This expression "The Mississippi Choctaws" standing alone is decidedly misleading. The issue, the real contest in this case, is the question as to whether or not the claimants represented or had authority to represent all the Mississippi Choctaw Indians. The claimants herein have not shown such general employment; on the contrary, they introduced numerous contracts between themselves and individual Mississippi Choctaws and upon these contracts relied for authority from these individuals to represent them. A single intervenor has relied upon a band or tribal contract. Therefore it is apparent that the use of the general designation always applied to the whole body of the Choctaw Indians residing in Mississippi is not to be loosely construed in the consideration of the present motion. It must be distinctly understood that the court in treating the requests now made approaches them all with the understanding that any reference made in this general way is limited to such individual Mississippi Choctaw Indians as employed the claimants by express agreement to represent them. We have not found, and the evidence does not warrant us in finding, that any single claimant had authority to or did represent the whole number residing in Mississippi.

Another observation of vital importance to the issues in the case becomes indispensable because it finds its way into the proposed requests by reason of the character of the services rendered by the claimants for which pay is claimed. The claim of the Mississippi Choctaw Indians to citizenship in the Choctaw Nation was never referred to a court for adjudication and determination. The Congress of the United States concluded the controversy by the enactment of various laws covering the claimed right, and it is for services in connection with the passage of these laws that the claim in issue arises, what is commonly called a "legislative service." For appearances before committees of Congress and other departments of the Government in behalf of a client interested in the passage of legislation, an attorney may lawfully charge fees, but such a character of service is strictly limited. No compensation may be charged or collected, no contracts in reference thereto can be enforced, for any service extending in the slightest degree beyond this well-defined zone of limitation. The personal solicitation of aid from an individual legislator, aid rendered an individual legislator, representations and arguments made for or before an individual legislator, no matter how convincing or under what circumstances, can not under

the law be made the basis of a charge for professional services. *Trist v. Child*, 21 Wall., 450. The court in finding the facts and reaching its conclusion of law upon the issues involved in the case has adhered with inflexible rigidity to the principles of law laid down in *Trist v. Child*, *supra*. We have further elaborated upon this subject in speaking to the requests of claimants wherein in our judgment it is directly in issue.

For the sake of convenience in the orderly discussion of the requests, we will first set forth the request and follow it with the court's comments thereon.

IX.

Whether or not the original contract, made June 23, 1896, and modified July 23, 1896, between Charles F. Winton and Robert L. Owen, provided that said Owen was to represent the claims of the Mississippi Choctaws before the proper officers of the United States and Indian Governments, and in which representation the said Winton was to assist and co-operate with the said Owen?

Finding IX of the court is exactly the same as it appeared in the tentative findings of December 7, 1914. Counsel for claimant, in his brief filed January 21, 1915, made no objection to the same, and in open court on the oral argument stated "no objections."

In making up the appendix to the findings of the court we experienced more or less confusion with reference to copies of the contracts mentioned in this request. An examination of Exhibit No.

429 11 as printed in the record disclosed a contract dated June 2, 1893, the acknowledgment dated June 23, 1896. This, of course, aroused some doubt as to the precise identity of the paper, and we sought to find the originals among the files in the case, in which respect we failed. The finding of the court meeting with no objection upon the first hearing, we did not further pursue the search. When the present motion was brought to our attention, and the finding assailed, we again searched the record for copies of or the original contracts. Failing to find either, we authorized a notice to each of the attorneys of record in the case to return at once to the files of this court all papers of whatever character which had been made a part of the record herein, and in response to said motion the original contracts mentioned were produced, the court being informed at the time, viz, January 23, 1917, that they had been found among the office files of Mr. William E. Robeson, now deceased, who up to the time of his death was the chief attorney for the claimants. The contracts provide in terms as follows:

Contract.

Know all men by these presents: That I, C. F. Winton, for and in consideration of one dollar and other valuable considerations, the receipt whereof is hereby duly acknowledged, do hereby contract and agree that I will, with due diligence, proceed to Mississippi and

Louisiana, to secure a contract with such Indians as may be entitled to participate in any distribution of lands or moneys of the Choctaw and Chickasaw Nations; that I will arrange to secure the evidence, powers of attorney, and contracts, then and there, as prescribed by Robert L. Owen; and for and in consideration of the premises I am entitled to receive one-half of the net proceeds of such cases as I personally obtain and send in to said Owen, and will be interested in none others.

I further contract and agree to assist J. E. Reynolds to work a part of such country, in fair division, understanding that said Reynolds has a similar contract with said Owen; and said Owen is to prepare the forms necessary for this operation, and to represent the claims of these people before the proper officers of the United States or Indian Governments, having my assistance and cooperation when and where called for, being authorized to obtain other assistance on this account.

In witness whereof, I hereto attach my hand and seal, this the 23rd day of June, 1896.

(Signed)

C. F. WINTON.

STATE OF KANSAS,

City of Wichita:

Be it remembered that on the 23rd day of June, 1896, personally appeared before me C. F. Winton, to me well known, who having been duly sworn, acknowledged the execution of the foregoing contract as his free and voluntary act for the purposes therein mentioned.

Witness my hand and official seal the day and year first above written.

[SEAL.]

(Signed)

J. N. RICHARDSON,

Notary Public.

My commission expires November 16, 1896.

Contract.

This contract witnesses that C. F. Winton for valuable consideration, duly acknowledged, contracts that he acts as attorney in the Mississippi, etc., Choctaw and Chickasaw claims under agreement with R. L. Owen that said Owen has half interest in said contracts in contemplation without exception and in event of any accident to Winton is fully authorized to take them up as attorney in place of Winton. Witness whereof I hereto attach my hand and seal.

(Signed)

C. F. WINTON.

ROBT. L. OWEN.

Cleveland, I. T.

430 Received of R. L. Owen fifty dollars on a/c of expenses to Mississippi, etc., in the citizenship claims of the Choctaws and Chickasaws. Witness my hand this 24th July, 1896.

(Signed)

C. F. WINTON.

Cleveland, I. T.

We have set them out in full as an evidence of their consideration by the court with respect to their materiality and as to whether in the exercise of a sound judicial discretion we should reopen the case and make them now, as we formerly intended to do, a part of the appendix to the findings. It is apparent from the instruments themselves that they are immaterial and incompetent for any other purpose than establishing the relationship between Mr. Winton and Mr. Owen. The contracts are private agreements between Mr. Winton and Mr. Owen to which the Mississippi Choctaw Indians were not a party in any way; they were made prior to the employment of Mr. Winton and Mr. Owen by any individual Mississippi Choctaw Indian, and concern alone a division of service and fees for professional service, at the time prospective, and impose absolutely no binding obligation upon any other persons or property except the parties signatory thereto. That Winton and Owen were associates is a conceded fact found by the court; under no circumstances can they be made the basis of a recovery for professional services against the defendant Indians.

X.

A. Whether or not the contracts referred to in the third paragraph of the court's finding 10 were taken for Winton and associates and some of them taken in the name of Winton?

Fact is immaterial. No dispute in the record concerning the association of Winton, Owen, and Daley or that the Daley contracts were taken in behalf of them. The contract is set forth in the appendix.

B. Whether or not the second series of contracts referred to in finding 10, page 5, of the court's finding embraced 2,000 persons instead of several hundred, as stated in said finding?

Not sustained by the record. No evidence of 2,000 persons. Record justifies the approximation made.

C. Whether or not all of the contracts referred to in the last paragraph of the court's finding 10 are set out in the appendix to the findings, and

Whether or not the first series of contracts taken in the name of Winton contained a provision as follows: "do hereby contract and agree that Charles F. Winton, of Vinita, Indian Territory, that he shall be authorized to represent us in securing recognition of our citizenship in the Choctaw Nation, and the right to participate in the distribution of land or money in case the same should be brought about; * * * and that he is hereby authorized under the two powers of attorney executed to him this day, and which are made a part hereof, coupled with an interest, to represent us before any of the authorities of the United States, or before any authorities of the Choctaw Nation, where it may be necessary authorizing him

431 where necessary to secure the cooperation of other attorneys, under the authority of this contract, and to incur in our behalf such expenses as may be necessary in prosecuting such claims."

When the above finding was made by the court, as clearly indicated by the language thereof, it was our intention to set out in the appendix to the findings a copy of the contract mentioned. Upon search through the record, however, the court was unable to find therein a copy of this particular form of contract, and hence it had to be omitted. The question now raised by the request not having been heretofore raised in motions of similar import filed by the claimants, the court assumed that the finding was satisfactory. On February 24, 1916, the claimants' attorney transmitted a form of contract to the court by letter, in which he said: "I am sending you the inclosed contract which, I think, is the form of the original Winton contract. I don't believe it will be possible to locate the contracts, unless they be found in the clerk's office, Department of Justice or Department of Interior." This communication was addressed in response to a request made upon said attorney by the court in our effort to supply this apparent omission in the findings. The contract transmitted bore the date of August 19, 1896, and left the court in doubt as to whether it was one of the original contracts of employment.

Last request concluded by discussion of same under Finding IX.

XI.

A. Whether or not James S. Sherman was chairman of the Committee on Indian Affairs of the House of Representatives and not Representative Curtis, at the time and as stated in the third paragraph of the court's finding 11?

Too frivolous to merit serious consideration. Representative Curtis testified as follows:

"Question. Please state what Member of Congress, if you know, took the leading part in securing legislation favorable to the rights of the Mississippi Choctaw tribal lands in Indian Territory.

"Answer. While I was a Member of the House and a member of the Committee on Indian Affairs, I was chairman of the subcommittee having charge of the affairs in the Indian Territory, or, rather, the affairs of the Five Tribes. As such chairman, I had charge of the legislation affecting the Five Tribes, and the first person to bring to my attention the Mississippi Choctaws was Hon. John S. Williams now a Senator from Mississippi, then a Member of the House from that State."

B. Whether or not Robert L. Owen, early in 1897, when he "spoke" to Honorable John Sharp Williams and submitted to him a copy of the Dancing Rabbit Creek Treaty, as stated in the second paragraph of finding 11, was at the time recognized by Mr. Williams as speaking in the capacity of an attorney at law in the behalf of the Mississippi Choctaws, and was then requested by Mr. Williams to prepare and submit to him a brief, letter, or written argument on the question of the matter of the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation and with which request Mr. Robert L. Owen complied and furnished Mr. Williams with such a brief?

432 The fact requested is immaterial. Neither in virtue of an express contract nor upon a quantum meruit can a claim for compensation for professional services rendered by a claimant be augmented, much less predicated, upon the personal solicitations of and from a public Representative. The court has considered all testimony tending even in the direction of a claim for pay involving personal solicitation as immaterial and incompetent. In *Trist v. Child*, 21 Wall., 450, the Supreme Court said:

"We entertain no doubt that in such cases, as under all other circumstances, an agreement express or implied, for purely professional services is valid. Within this category are included drafting the petition to set forth the claim, attending to the taking of testimony, collecting facts, preparing arguments, and submitting them orally or in writing to a committee or other proper authority, and other services of a like character. All these things are intended to reach only the reason of those sought to be influenced. They rest upon the same principle of ethics as professional services rendered in a court of justice, and are no more exceptionable. But such services are separated by a broad line of demarcation from personal solicitation, and the other means and appliances which the correspondence shows were resorted to in this case."

The court regards the request and ones of similar import as immaterial. Whether Mr. Williams regarded Mr. Owen as attorney for the Mississippi Choctaws is likewise immaterial and quite surely incompetent if elicited to establish the case referred under the jurisdictional acts.

C. Whether or not in 1897 Robert L. Owen presented an oral argument and written brief to the Honorable John Sharp Williams, then a Representative in Congress from the district in which the Mississippi Choctaws then resided, on the question and in behalf of the rights of the Mississippi Choctaws to citizenship in the Choctaw Nation and in favor of their rights to participate in the partition of the lands of the Choctaw Nation under the provisions of article 14 of the Dancing Rabbit Creek treaty between the United States and the Choctaw Nation, of September 27, 1830?

Whether or not the written brief submitted by Mr. Owen to Mr. Williams was in accordance with the latter's request?

Inquiry immaterial. Subject covered by discussion under prior request.

D. Whether or not early in the year 1897 Robert L. Owen submitted an argument to Honorable John Sharp Williams, then a Representative in Congress from the 5th congressional district of Mississippi, wherein practically all full-blood Choctaws in Mississippi then resided, and, as the result of said arguments and documents submitted by him, Mr. Owen, or the interest created thereby, Mr. Williams became convinced, contrary to his original opinion, of the rights of said Mississippi Choctaws to share in the privileges of Choctaw citizens in the Choctaw Nation under article 14 of the Dancing Rabbit Creek treaty, entered into September 27, 1830, by the United States and the Choctaw Nation?

433 Materiality disposed of by prior discussion. *Trist v. Child*,
supra.

E. Whether or not in February, 1897, during the consideration by the Committee on Indian Affairs of the House of Representatives of House bill 10372, which recognized the rights of the Mississippi Choctaws to citizenship in the Choctaw Nation, Robert L. Owen appeared and made an argument in behalf of the Mississippi Choctaws to citizenship in the Choctaw Nation and the said committee made a favorable report on said bill, which report, in accordance with the request of the committee, was drawn and prepared by Mr. Owen.

The inquiry here propounded is fully covered by the facts found by the court in Finding XV.

F. Whether or not it is a fact that the Congressional Record fails to show any bill or resolution introduced by Honorable John Sharp Williams in behalf of the Mississippi Choctaws or any remarks whatever made by Mr. Williams relative to the Mississippi Choctaws from 1896 to March, 1899.

Request is obviously immaterial. If the purpose is to impeach the testimony of Mr. Williams, no proper foundation is laid. Mr. Williams gave his deposition and was cross-examined in extenso, claimant's counsel being present.

To ask this court to state as a finding of fact that it has searched the Congressional Record covering a period of three years for the purpose of discovering the nonexistence of an alleged fact comes very close to an absurdity. The case does not involve the simple question of what Mr. Williams did not do. The issue presented concerns the positive fact, What did he do?

XII.

Whether or not Senator H. P. Money and Senator Walthall in 1896 acknowledged the receipt of letters from Charles F. Winton praying them to assist the Mississippi Choctaws;

Whether or not they pledged their support in their replies to the said Winton—that is, that they would assist the Mississippi Choctaws.

Immaterial and incompetent under decision of the Supreme Court in *Trist v. Child*, *supra*. The letters mentioned should have never gone into the record; they are clearly inadmissible and found their way in by an attempt to make them exhibits to an oral examination of a witness other than the writer of the letters. They were never properly identified and no rule of evidence covering the introduction of papers of this character was observed. The letters upon their face show that they were not even written to the witness who presented them.

XVI.

A. Whether or not Robert L. Owen drew House bill 10372 recognizing the rights of Mississippi Choctaws to citizenship in the Choctaw Nation and caused the same to be introduced in Congress,

434 The record discloses as found by the court that H. R. 10372 was introduced in Congress by Representative Allen. The fact elicited is immaterial under decision in *Trist v. Child*, supra.

Whether or not the amendment proposed by Senator Walthall to the Indian appropriation act of 1897 was an amendment in the same words as House bill 10372 recognizing the rights of the Mississippi Choctaws to citizenship.

The request is not for the finding of a fact. The inquiry elicits a conclusion. The findings of the court show the facts.

Whether or not said amendment was furnished to the said Walthall by Robert L. Owen.

Immaterial. Record furnishes no decisive evidence as to request. Service gratuitous under *Trist v. Child*, supra.

B. Whether or not the provision of the Indian appropriation act of June 7, 1897, set out in finding 16, p. 8, of the court's findings, was inserted in said appropriation act in the Senate as the result of an effort made by Robert L. Owen and associates to have enacted a provision more favorable to the rights of the Mississippi Choctaws to citizenship in the Choctaw Nation?

Facts found by the court in reference to this legislation are stated in the court's Finding XVI.

The court in any event can not ascertain from the record that legislation resulted from individual effort. The Congress of the United States acts deliberately. The terms and provisions of any laws passed by Congress can not be attributed to any outside influence or said to result from any personal advocacy of the same, and a claim for pay for legislative services goes no further than the specific things usually performed by an attorney in a court of justice, the very precise steps mentioned by the Supreme Court in *Trist v. Child*, supra. The court can only find from the records of Congress what transpired with reference thereto. There is no competent evidence in the record upon which the court can predicate a finding in response to the above request. The fact sought to be elicited is a conclusion and not the statement of a fact.

XVIII.

Whether or not the record shows that Senator Walthall caused to be drafted the amendment set out in finding 18, providing for the identification of the Mississippi Choctaws and which was put into the act of June 28, 1898, in an amended form.

Immaterial. Facts in reference thereto fully covered by the court's finding XVII. The question as to whether Senator Walthall did or did not draft the said amendment is not of importance to the issues in this case. What a Senator of the United States did in his official capacity throws no light upon the claimant's right to compensation for professional services, although the subject matter of the legislation may affect his clients. It would not even afford
435 assistance to the claimants if he did so at their personal request. The parties to this suit are the claimants and the Mississippi Choctaw Indians.

XIX.

Whether or not after the sending out to the Mississippi Choctaws of the circular letter dated July 1, 1898, set out in finding 19, pp. 9 and 10, of the court's findings, Charles F. Winton and associates or employees went personally into the various counties where the Mississippi Choctaws lived in Mississippi and sent runners or messengers throughout the country districts urging the Mississippi Choctaws to appear before the Dawes Commission for identification?

The record furnishes proof, competent testimony, that Charles F. Winton hindered, delayed, and annoyed the commission in its work in Mississippi. This appears positively from the testimony of Commissioner McKennon, who in fact publicly rebuked Mr. Winton for his conduct. It is corroborated by the reports of the commission, and is clearly shown to have been active and continuous. It is nowhere contradicted by any competent evidence in the record. That his conduct at this time was contrary to the understanding and instructions of Mr. Robert L. Owen appears, but Mr. Owen was not with Mr. Winton in Mississippi, and Mr. McKennon was. The record is indisputable as the correctness of the court's finding upon this subject. It is nowhere contradicted at any place in the record except by a voluntary statement in an ex parte affidavit made by Mr. Winton, which is obviously incompetent.

XX.

A. Whether or not the full-blood rule of evidence was adopted by A. S. McKennon in the report of March 10, 1899, as the result, wholly or in part, of the argument and efforts made by Robert L. Owen.

If the request is material the fact is not susceptible of proof. The report of Commissioner McKennon is set forth in the findings. The inquiry seeks to elicit a conclusion. As before observed, we can not find from the proof in the record—as a fact—that certain public officials did this thing or that as a result of someone's argument. It is possible that they may have had convictions of their own. We set forth what they did, and if they give reasons therefor, find the same.

Whether or not the said McKennon immediately afterward became a member of the firm of Mansfield, McMurray & Cornish, who thereafter fought the full-blood rule of evidence and attempted to have it repealed by the Choctaw-Chickasaw agreement as submitted February 23, 1901, and March 24, 1902?

The request is plainly argumentative and suggestive. We find nothing in the record impugning the sincerity of Commissioner McKennon in the discharge of his public duties.

436 B. Whether or not it is a fact that no witness testified in support of the fact stated in the second paragraph of finding 20, page 12, of the court's findings, and that Winton at the time mentioned in said findings stated to Commissioner McKennon that he was not interfering with but assisting in causing the Indians to come before the commission for identification, and that at least four

witnesses testified that Winton and employees at that time were trying to get the Indians to come before the commission for identification?

The request as framed is clearly argumentative. It is fully answered in the court's findings. It is likewise subject to criticism as a repetition of the same request in finding XIX. It is not a request for a finding of fact. It is impertinent and irrelevant.

C. Whether or not the Alphabetical Index of the names of 16,000 Choctaw Indians prepared and printed by Mr. Owen, with page references to evidence showing their pedigree, stated in finding 20 of the court's findings at bottom of page 12, as furnished to Commissioner McKennon by R. L. Owen was of great value and assistance to the Dawes Commission in identifying the Mississippi Choctaws?

Fact has been found and appears in the last paragraph of the court's finding XX, p. 12.

XXIII.

A. Whether or not the amendment proposed by Senator James K. Jones in April, 1900, to the Indian appropriation act relative to the Mississippi Choctaws was in the identical words of the petition Winton and his associates addressed to the Congress and printed as a Senate document;

Whether or not he explained to the Senate that this amendment was offered at the instance of the representatives of the Mississippi Choctaws.

B. Whether or not Robert L. Owen and associates prepared and caused to be presented to Congress and contended for the passage and enactment of the provision in the Indian appropriation act of May 31, 1900, set out in the second paragraph of finding 23, on page 13 of the court's finding?

A. This is not a request for a finding of fact. The memorial referred to is set out in the court's findings, and the legislation adopted follows in the next findings. There can be no difficulty by a comparison of the two in reaching a conclusion.

The record is silent as to the second request. The Congressional Record on the subject does not mention the alleged representatives of the Mississippi Choctaws. Fact, if found, is immaterial.

B. This request calls for no finding as to appearances before committees of Congress. The authorship of the legislation has been the subject of acute controversy, as appears by the record. The authorship of the second proviso is conceded. The record sustains the court's finding and does not sustain the making of such a positive statement of fact as the inquiry seeks to elicit. The court's finding is the ultimate fact arrived at by an analysis of the testimony introduced, testimony decidedly conflicting.

XXIV.

A. Whether or not the Dawes Commission and the Interior Department were from 1896 to March 10, 1899, when they yielded and

adopted to full-blood rule of evidence, opposed to the enrollment of the Mississippi Choctaws as Choctaw citizens;

Whether or not the Dawes Commission did not later reverse itself, about the time McKennon, in June, 1900, left the commission and became a member of the firm of Mansfield, McMurray & Cornish, employed by the Choctaw Nation to cause the commission to nullify the act of May 31, 1900, which that commission did by a harsh, technical, and restricted construction of said act;

Whether or not in the report of the Dawes Commission of May 19, 1902, the reasons of the Dawes Commission for such opposition were fully set up and were sustained by the Secretary of the Interior in his letter of June 3, 1902, thereby destroying and reversing the directions given by him to the Dawes Commission to follow the full-blood rule of evidence in his letters of August 26, 1899, and October 19, 1900, as stated in the last paragraph of the court's finding 24?

B. Whether or not the Dawes Commission followed the full-blood rule of evidence in accordance with the directions of the Secretary of the Interior in his letters of August 26, 1899, and October 10, 1900, and referred to in the court's findings 24?

Whether or not the Secretary of the Interior for a time acquiesced and, in fact, approved the action of the Dawes Commission in not following said directions?

The above requests are manifestly argumentative and involve the statement of a conclusion. The court has found from the record exactly what the Dawes Commission did in considering this matter and followed it with the official action of the Secretary of the Interior. In the court's opinion the attitude of the commission is fully discussed. The findings of fact must avoid conclusions. Taking the above requests as a whole, the proper place for the insistence is in the briefs of counsel. The court's findings afford ample means from which proper deductions as to the attitude of the commission can be made. The subject is treated extensively in the same.

XXIX.

A. Whether or not the amendments to the agreement which later became the act of July 1, 1902, providing for and adopting the full-blood rule of evidence, longer time within which to apply for identification and longer time within which to remove to the Choctaw country west, after notification of official identification, were amendments agreed to in the Committee on Indian Affairs of the House of Representatives before which Robert L. Owen made an argument in support of said amendments in behalf of the Mississippi Choctaws while said committee was considering said questions?

In claimants' second amended petition filed in this court appears the following allegation: "The bill of July 1, 1902, known as
438 the Choctaw-Chickasaw agreement, passed over the protest of your petitioners, and in spite of every effort that they could make for its proper amendment." This petition is verified by Wm. H. Robeson, attorney for petitioners, and Robert L. Owen, appearing for himself.

Subsequently on page 299 of the record Robert L. Owen testifies as follows:

"In spite of our protest the Choctaw-Chickasaw agreement was passed through Congress July 1, 1902."

Again at page 2576 of the record the witness states:

"The service I tried to render in opposing the legislation of 1902 was in opposing injurious restrictions on the rights of the Mississippi Choctaws, and in this attempt I failed, and I do not think I rendered much service in this appearance, although I endeavored to do so."

B. Whether or not the act of May 31, 1900, would have given the Mississippi Choctaws all the relief necessary and more than the act of July 1, 1902, if the act of 1900 had been correctly interpreted by the Dawes Commission and as later construed by Assistant Attorney General Van Devanter, as stated in his opinion of December 2, 1901, and approved by the Secretary of the Interior?

This is obviously not a request as to a specific fact. Any response thereto involves a conclusion, not of fact but of law. It is argumentative.

C. Whether or not the Secretary of the Interior in his letter of May 14, 1902, to the United States Senate contemplated such correct interpretation as that given in the said opinion of Assistant Attorney General Van Devanter under date of December 2, 1901?

There is absolutely no evidence in the record from which we can ascertain the "contemplation" of the Secretary of the Interior. This request asks for a conclusion deducible alone from the Secretary's conduct and written communications.

D. Whether or not the memorials prepared and caused to be presented to Congress, to both the Senate and the House of Representatives, by Robert L. Owen, Winton and associates during the period from July, 1896, to 1906, the arguments before the committees of the Senate and of the House; the arguments before the Dawes Commission, the United States courts, the Attorney General, the Interior Department, the officials of the Choctaw Nation, and Members of Congress created a powerful sentiment in favor of granting by legislation the rights of the Mississippi Choctaws to citizenship in the Choctaw Nation, causing Congress to pass numerous acts in their interest and the identification of 1,643 Choctaws and their allotment and enrollment on a separate roll known as the Mississippi Choctaw roll?

We need indulge in no further comment with respect to this request than to say it is not a request for a response as to whether there is proper evidence to prove a material fact. It asks for a conclusion—

a conclusion which is one of the crucial issues in the case. The request is argumentative. This court is unable (and it is no part of the issues in this cause) to find whether or not what the claimants said or did produced a "powerful sentiment" for the passage of legislation advocated by them.

E. Whether or not from 1896 when Robert L. Owen and Charles F. Winton first became representatives of the Mississippi Choctaws in

the matter of the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation, to 1906, they, as attorneys for said Mississippi Choctaws, persistently and continuously prosecuted the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation and made arguments both oral and written in support thereof to Congress, committees of Congress, Members of Congress, the Secretary of the Interior, the Bureau of Indian Affairs, the Dawes Commission, and the officers and representatives of the Choctaw Nation?

There is no evidence in the record establishing the fact that Robert L. Owen and Charles F. Winton ever became the representatives of the Mississippi Choctaws as a body. That is one of the most important issues in the case. The remainder of the request is fully answered in the court's findings.

Whether or not during said period Robert L. Owen was recognized by the committees of Congress, Members of Congress, and other officials of the Government and of the Choctaw Nation, as the attorney for the Mississippi Choctaws in their effort to obtain their rights to citizenship in the Choctaw Nation, then made before Congress and its committees?

The fact if shown is immaterial. The issue is not what the committees of Congress, etc., recognized as the true representative capacity in which claimants appeared. The court is trying a lawsuit committed to it by special acts of jurisdiction, and proof must be adduced showing the true relationship between the claimants and the Indians. This obviously can not be done by attempting to show that certain people recognized the claimants as appearing in a certain capacity, and any evidence tending toward that end is incompetent and immaterial. The parties mentioned were not charged with an investigation of this particular fact.

F. Whether or not Robert L. Owen, as the recognized attorney for the Mississippi Choctaws, from 1896 to July 1, 1902, contended for and supported by argument, written and oral, the adoption by Congress of the full-blood rule of evidence in behalf of the Mississippi Choctaws in the matter of their claim to citizenship in the Choctaw Nation, then being considered by Congress and the committees of Congress?

Whether or not any of the 1,643 Mississippi Choctaws enrolled as such would have been or could have been enrolled and admitted to citizenship in the Choctaw Nation under the law existing at the time of enrollment without the adoption and use of the said full-blood rule of evidence?

The request in its first paragraph begins by stating a conclusion. The fact as to the full-blood rule of evidence is fully covered in the court's findings.

440 The second paragraph is argumentative and asks the court to find as a fact what is apparently a conclusion, involving in the findings a construction of a statute.

G. Whether or not Robert L. Owen, as the recognized attorney for the Mississippi Choctaws, while the Choctaw-Chickasaw agreement was pending in Congress and before its committees the first six months of 1902 contended for and supported by arguments, written

and oral, an amendment to said agreement granting to the Mississippi Choctaws a longer period of time after identification as Choctaws within which to remove to the Choctaw country west than that originally provided for therein?

Heretofore fully answered in the court's findings.

H. Whether or not Robert L. Owen, as the recognized attorney for the Mississippi Choctaws, while the Choctaw-Chickasaw agreement was pending in Congress and before its committees during the first six months of 1902 contended for and supported an amendment to said agreement granting to said Choctaws a longer period of time within which to apply for identification as a Choctaw citizen than that originally provided for therein?

The facts embodied in the request are fully answered in the court's findings both as to the material fact and the capacity in which the claimants appeared.

I. Whether or not the full-blood rule of evidence provided for in the amendment drafted by Mr. McMurray, attorney for the Choctaw Nation and Assistant Attorney General Van Devanter, which later became a part of the act of July 1, 1902, was drafted by said parties in the way of a compromise settlement of and to end the long and somewhat furious contest made by Robert L. Owen and associates for a larger and fuller recognition of the rights of the Mississippi Choctaws to citizenship in the Choctaw Nation?

Whether or not the adoption by said amendment of the full-blood rule of evidence as a compromise substantially granted the amendment contended for by Robert L. Owen, as attorney for the Mississippi Choctaws and as prayed for in the memorial prepared by Robert L. Owen and associates, and which they caused to be presented to the House and Senate April 24, 1902, wherein it was prayed that the full-blood rule of evidence be adopted and the full bloods be admitted and given time for identification as full bloods and citizens of the Choctaw Nation, and time within which to remove to the Choctaw country West?

The request repeats an inquiry as to facts heretofore requested, is argumentative, and asks for a conclusion. The material facts as to the legislation of 1902 are to be found in the court's findings.

J. Whether or not Mr. McMurray and Mr. Van Devanter, who drafted the amendment recognizing the full-blood rule of evidence, did so at the instance of Hon. J. S. Sherman, chairman of the Committee on Indian Affairs of the House of Representatives, before whom Robert L. Owen had argued in favor of the full-blood rule of evidence?

K. Whether or not this direction of Hon. J. S. Sherman to Mr. McMurray to prepare such an amendment was in effect instructions to prepare it for use as a committee amendment?

Whether or not this draft by Mr. McMurray was presented on the floor of the House by Mr. Curtis, a leading member of the Indian Committee, and the member in charge of the Choctaw-Chickasaw agreement then pending on the floor?

J. The facts asked for in this request are fully covered in the

court's findings. It is quite immaterial as to who requested Mr. McMurray or Mr. Van Devanter to draft this legislation; even if the claimants had done so it would be a gratuitous service.

K. Argumentative and asks for a conclusion and not a fact.

The second paragraph is answered in the court's findings.

L. Whether or not claimants' motion for a new trial filed July 25, 1916, and, without hearing or argument thereon, overruled December 11, 1916, alleged newly discovered evidence supported by a letter written by Tams Bixby on September 23, 1915, which letter is published as a part of a congressional document, the material or relevant portion of said letter being set out in subsections M and N hereof?

Whether or not the Tams Bixby who wrote said letter of September 23, 1915, was the same Tams Bixby who was a member of the Dawes Commission from 1896 to 1906, and part of that period chairman of said commission?

M. Whether or not the following statement—

"Those representing Mississippi Choctaws strenuously contended that the full-blood rule of evidence should be adopted and that the schedule of March 10, 1899, should be recognized as binding. This schedule was erroneous in many particulars, as the Dawes Commission discovered upon a critical examination of it; but finally, in order to adjust this controversy, a compromise was reached when the Choctaw-Chickasaw agreement of 1902 was passed on in Congress, so that an amendment providing for the full-blood rule of evidence was adopted, so drawn, however, as to recognize only those who were living full bloods and not recognizing their half-breed children. It was thought better by the Government authorities to yield this point as a settlement of the controversy, as the friends of the Mississippi Choctaws were demanding very much larger concessions"—

made by Mr. Tams Bixby in his letter of September 23, 1915, is true as shown by the record in this case?

The contents of this finding, its materiality, and the court's action thereon are fully discussed in the first part of the court's opinion herein.

N. Whether or not it affirmatively appears and is uncontradicted by the evidence that Robert L. Owen, as the recognized attorney for the Mississippi Choctaws, acquiesced in and favored the act of July 1, 1902, as a compromise measure after it had been amended so as to protect the Mississippi Choctaws by the adoption of the

442 full-blood rule of evidence and other amendments granting relief to the Mississippi Choctaws?

The request is argumentative, seeks a conclusion, is a repetition, and in so far as at all material has been heretofore commented upon.

O. Whether or not the following statement made by said Tams Bixby in his said letter of September 23, 1915—

"On the 31st day of May, 1900, Congress passed an act that Mississippi Choctaws 'duly identified' by the Dawes Commission might remove to the Choctaw country West at any time before the rolls closed.

"Many applications were made under this act for identification.

The Dawes Commission decided that any person to be 'duly identified' must prove that his ancestors had complied with the conditions of the fourteenth article of the treaty of 1830, and that he was a lineal descendant of such ancestor. After examining nearly every case which had been enrolled under the schedule of March 10, 1899, the commission decided that only a very few individuals would be entitled to enrollment as 'duly identified.' Neither the Dawes Commission nor the Interior Department felt that it had a right by loose interpretation to permit the Mississippi Choctaws to absorb millions of dollars of property vested by law in the Choctaw Nation West unless it were done upon the direct and express authority of Congress. It did not seem right that those who had lived in Mississippi for generation after generation, and who had taken no part in developing the Choctaw country West, should have the right to joint ownership of this property unless they could prove themselves entitled by competent evidence, and this they could not do. For that reason the Dawes Commission and the Interior Department were opposed to their enrollment and in the report of the Dawes Commission of May 19, 1912, the reasons of the Dawes Commission were fully set up and were sustained by the Secretary of the Interior in his letter of June 2, 1902.

"The Choctaws and Chickasaws West naturally felt that they were not called upon to divide this estate with persons who had not lived with them for over 70 years and they were opposed to admitting Mississippi Choctaws who could not support their claim by adequate and competent evidence, and for this reason, the agreement was presented to Congress February 23, 1901, and also March 24, 1902, providing that only Mississippi Choctaws 'duly identified' should be admitted."

is true and is fully supported by the evidence in this case.

The request is a repetition and is argumentative. The Bixby letter is not in the record, and the subject matter of the same has been fully answered in a former portion of this opinion.

P. Whether or not the amendments of sections 41 and 42 of the agreement which later became the act of July 1, 1902, set out
443 in finding 29, were caused to be enacted as a result of the long contest from 1896 to July 1, 1902, inclusive, waged by Robert L. Owen and Charles F. Winton and associates in behalf of the rights of the Mississippi Choctaws to citizenship in the Choctaw Nation as provided for in said amendment?

Q. Whether or not all of the oral evidence in the present case is to the effect that Robert L. Owen, Winton, and associates contended for and were in favor of and labored from 1896 to July 1, 1902, especially during the first six months of the year 1902, as attorneys for the Mississippi Choctaws, for the passage of remedial legislation for the relief of the Mississippi Choctaws similar to and the same as the provisions of the act of July 1, 1902, as finally enacted, and that not one witness testifies that Robert L. Owen nor any of the associates of Winton opposed or protested against the said provisions of said act contained in the committee amendments mentioned in finding 29, granting relief to the Mississippi Choctaws?

R. Whether or not said Robert L. Owen, as the recognized attorney for the Mississippi Choctaws from July, 1896, to 1903, persistently, forcefully, and successfully represented said Mississippi Choctaws and their interests in the matter of their claims as to citizenship in the Choctaw Nation, then pending before Congress, by causing memorials in their behalf to be presented to the Congress, making arguments before the committees of the Congress and the officials of the Government and the Choctaw Nation?

Whether or not the labor of Robert L. Owen in behalf of the rights of the Mississippi Choctaws to citizenship in the Choctaw Nation, from July, 1896, to 1906, resulted in any benefit or value whatever to the Mississippi Choctaws?

We have grouped the above requests and will discuss them generally, pursuing this policy because it is evident that their similarity, both as to subject matter and verbiage, indicate that they are simply and solely a repetition of several preceding requests upon the same matter, with the added feature of emphasis and positiveness.

If the court were required to respond to the requests it is patent that it would be expressing in the findings a conclusion already expressed in the opinion of the court. We need not repeat the issue as to who were the representatives of the Mississippi Choctaw Indians as a body, nor need we again go into the legislation of 1902. The facts appertaining to the subject have been found and discussed. It adds nothing to the force of claimant's contention to emphasize and repeat requests for specific response to interrogatories as contained in the requests, nor is it at all conducive to their proper consideration to make them general and argumentative. Findings of fact serve the purpose of setting in view the origin, progress, and conclusion of the subject matter at issue. No light is thrown upon the issue by interspersing among the many findings a number of conclusions or stating arguments in support thereof. There is not embodied in these requests the statement of a single fact which has not been responded to in some form in the findings of the court as
444 they now are, and it would be a useless and prolonged proceeding to continue to repeat the comment and discussion previously made upon this identical subject.

In request identified as "Q" the inquiry is decidedly impertinent, immaterial, and suggestive.

XXXI

A. Whether or not the services rendered by Robert L. Owen, Winton, and associates, from 1898 to 1906, inclusive, in behalf of the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation pending in Congress and before its committees during that time has ever been paid for by anyone?

The request as worded is immaterial, the question being whether paid for by the defendants. Payment would be a matter of defense; the fact that payment is not positively found is the equivalent of a negative. The court has made no findings upon issues not involved.

B. Whether or not during the period from 1896 to July 1, 1902,

inclusive, while the matter of the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation was pending in Congress and before its committees, those representing the Mississippi Choctaws strenuously contended that the full-blood rule of evidence should be adopted and that the schedule of March 10, 1889, should be recognized as binding, and, finally, during the early part of 1902, in order to adjust this controversy a compromise was reached when the Choctaw-Chickasaw agreement of 1902 was pending before Congress and its committees so that the amendment providing for the full-blood rule of evidence was adopted for the reason that it was thought better by the Government and the Choctaw Nation authorities to yield this point to the Mississippi Choctaws as a settlement of the controversy for the friends of the Mississippi Choctaws were demanding very much larger concessions?

The request is argumentative and asks for a conclusion. The language, in any event, is too general. We are only concerned with the parties claimant in this court. The material facts of the subject matter have already been found.

C. Whether or not during the period from July, 1893, to 1906, Robert L. Owen in representing the Mississippi Choctaws as their recognized attorney labored to protect their rights which resulted in obtaining the recognition and legalizing of their rights to citizenship in the Choctaw Nation, expended approximately \$35,000 in cash for which he has not been reimbursed;

Whether or not he has received any compensation for the services rendered or expenses incurred in behalf of the Mississippi Choctaws?

Any response to the first paragraph would be the expression of a conclusion.

445 No competent evidence in the record upon which an answer to the first or second paragraph could be predicated.

D. Whether or not during the period from July, 1896, until the compromise settlement was made by the Choctaw-Chickasaw agreement, act of July 1, 1902, save and except when they adopted the full-blood rule of evidence, March 10, 1889, and abandoned it in 1900, when McKennon entered the employ of the Choctaw Nation West as a member of the firm of Mansfield, McMurray & Cornish, the Choctaw Nation and the Dawes Commission, especially members McKennon and Bixby, were opposed to recognizing the rights of the Mississippi Choctaws to citizenship in the Choctaw Nation and contended that they had no rights and ought not to be enrolled as such citizens and that no attention should be paid to their said claims to citizenship in the Choctaw Nation?

This request is a repetition, is argumentative, suggestive, and involves a conclusion.

Whether or not during that same period of time, 1893 to July 1, 1902, Robert L. Owen was consistently representing the interests of the Mississippi Choctaws before the committees of Congress, and the Commissioner of Indian Affairs, and the Interior Department, and before the Choctaw Nation authorities, and the Dawes Commission, making arguments in their behalf and contending for the rights of the Mississippi Choctaws to citizenship in the Choctaw Nation?

E. Whether or not the 1,643 Mississippi Choctaws who were admitted to citizenship in and received allotments as members of the Choctaw Nation obtained the right to become such citizens and thereby receive allotments as a result to any extent whatever of any of the labor and work done by Robert L. Owen and associates during the period of several years prior to the passage of the acts under which they were enrolled and allotted; and what compensation is equitable or justly due therefor on the principle of quantum meruit as required by the jurisdictional act in this case?

F. Whether or not, as a result of the remedial legislation enacted by Congress during the years 1896 and 1906, inclusive, 1,643 Mississippi Choctaws have been admitted and enrolled as citizens of the Choctaw Nation and have received as a result thereof property interests worth at least \$15,000,000?

G. Whether or not each of the 1,643 Mississippi Choctaws identified and enrolled as citizens of the Choctaw Nation as a result of the remedial legislation enacted by Congress during the years from 1896 to 1906, inclusive, have received an estate or property interests worth at least \$9,000?

H. Whether or not a fair, reasonable, equitable, or just compensation on the principle of quantum meruit for the services rendered the Mississippi Choctaws in the matter of their claim to citizenship in the Choctaw Nation from 1896 to 1906, inclusive, is a sum equal in amount to 6 per cent of the total value of the property interests received by said Mississippi Choctaws, or 6 per cent of \$15,446,000,000.

I. Whether or not Robert L. Owen, generally understood to be and as the recognized attorney for the Mississippi Choctaws by the chairman of the Committee on Indian Affairs of the House of Representatives, "appeared several times each Congress before the Committee on Indian Affairs in behalf of the Mississippi Choctaws," while the matter of their claim to citizenship in the Choctaw Nation was pending before said committees from 1896 to 1906;

Whether or not the said services and efforts of Robert L. Owen "to secure their recognition was unceasing, assiduous, constant, faithful, efficient, and of great value to the Mississippi Choctaws," as testified to by Mr. Curtis, Mr. Jones, Mr. Money, Mr. Sherman, Mr. Little, and Mr. Stephens, all Members of Congress during said period?

We have grouped the preceding requests. It is obvious that they are not requests for specific findings; they are the contentions of the claimants in the case at bar. The court has found fully as to the facts; these requests go to the correctness of the findings, not the omission of material facts. They seek conclusions and are properly a part of the claimant's brief. On their face they exhibit the fact that the designed purpose is to challenge the verdict of the court as to the facts found from the record. They contain many repetitions and in no particular come within the rules. There is no competent proof in the record as to the actual value of the Indian allotments. If there had been, the court would have so found. A response to the above findings would be misleading and of no assistance to a reviewing court, for they are general and comprehensive; they offer no de-

tails from which conclusions could be reached, but in their very language assume the establishment of certain facts not proven to the satisfaction of the court.

XXXII.

A. Whether or not the intervenor, Ralston, Siddons, and Richardson, on the 4th day of March, 1911, and the claimants on the 20th day of February, 1915, filed a motion for permission to amend the petition herein by making the United States a party defendant to this case; and, if so, what action was taken on said motions, respectively, and when was action taken on each of said motions?

A motion of this character was made and overruled by the court. See page 86 of the Chief Justice's concurring opinion, wherein it is said:

"the court are agreed that the United States can not be made defendants in this proceeding."

Through some inadvertence the entry was not made in the docket. The court has ordered the proper docket entries to be made lest some injustice might be done.

The facts covered by this request would in no event be entitled to appear in the findings of the court. They are a part of the docket entries with reference to the proceedings in this case and go into the transcript of the record which is certified to the Supreme Court on appeal.

447 All this could have easily been called to the attention of the court on a single motion, and should have been done long before this.

B. Whether or not the act of May 31, 1900, limited the time within which the Mississippi Choctaws could remove to the Choctaw country West to six months after identification as did the act of July 1, 1902?

C. Whether or not the act of May 31, 1900, required the Mississippi Choctaws to submit proof of their removal within twelve months after the date of identification as did the act of July 1, 1902?

D. Whether or not the act of May 31, 1900, required the Mississippi Choctaws to continuously reside for three years upon the land of the Choctaw-Chickasaw Nation before allotment as did the act of July 1, 1902?

E. Whether or not the act of May 31, 1900, required a Mississippi Choctaw to make proof of continuous residence for three years on the Choctaw land within four years after enrollment as did the act of July 1, 1902?

F. Whether or not the act of May 31, 1900, limited the time within which the Mississippi Choctaws could apply for identification and enrollment as a citizen of the Choctaw Nation as did the act of July 1, 1902?

All the above requests call for the construction and interpretation of acts of Congress, matters of judicial opinion.

The court having examined in detail the said motion for the purpose of ascertaining if any material finding of fact has been omitted

from its findings, and for the further purpose of discovering the extent to which it ought to go in exercising its discretion under the rules, believes the motion for leave to file said motion embodying the requests above noted should be denied. We are unable to conclude, as appears by the foregoing opinion, that the claimants, by the aforesaid motion, have brought to our attention any error of a substantive character which in anywise disturbs the court's conclusions as to the correctness of the findings heretofore announced.

The motion for leave to file said motions will be overruled. It is so ordered.

Campbell, Chief Justice; Barney, Judge; Downey, Judge; and Hay, Judge, concur.

448 XIII. *Application of the Estate of Charles F. Winton, Deceased, and Others, for, and Allowance of, Appeal.*

No. 29821.

THE ESTATE OF CHARLES F. WINTON, Deceased, and Others,
vs.

JACK AMOS and Others, Known as the "Mississippi Choctaws."

From the judgment rendered in the above-entitled cause on the 29th day of May, 1916; December 11, 1916, and January 29, 1917, in favor of defendants, the claimants, by their attorney, on the 6th day of February, 1917, make application for, and give notice of, an appeal to the Supreme Court of the United States.

WILLIAM W. SCOTT,
For Claimants.

Filed February 6, 1917.

Ordered that the above appeal be allowed as prayed for.
February 6, 1917.

BY THE COURT.

449

Court of Claims.

No. 29821.

THE ESTATE OF CHARLES F. WINTON, Deceased, and Others,
vs.

JACK AMOS and Others, Known as the "Mississippi Choctaws."

I, Samuel A. Putman, Chief Clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the findings of fact and conclusion of law; of the opinion of the court and of the concurring opinion; of the

judgment of the Court; of the applications of the claimants and the intervenors for, and the allowance of appeals to the Supreme Court of the United States, and history of proceedings had in said cause.

In testimony whereof I have hereunto set my hand and affixed the seal of the said Court of Claims at Washington City, this 7th day of February, A. D. 1917.

SAMUEL A. PUTMAN,
Chief Clerk Court of Claims.

[Seal of the Court of Claims.]

450 To the Clerk of the Supreme Court, Washington, D. C.

Sir: The parts of the record designated by the appellants in the case of Wirt K. Winton, administrator, et als, and six other appeals, Nos. 924, to 930, inclusive, October Term, 1916, to be printed for and used as the trial record are as follows:

The petition and amended petitions of all appellants, omit the petitions and all accompanying exhibits of the intervenors who did not appeal.

All of the court's Findings of Fact pertaining to the appellants, that is, all Findings of Fact except Findings 38, 39, 41, and 45, that is, do not print Findings 38, 39, 41 and 45.

Print all of the Appendix except that part commencing with contract 2, page 37, and ending with the words "J. E. Arnold" on page 41.

Also do not print that part of the Appendix designated as the Gillette contract commencing on page 46 and extending to the bottom of page 48.

And do not print the Gallaspy and Boyd agreements set out on pages 53, 54 and 55.

We herewith hand you a statement of the points on which the respective appellants intend to rely.

WILLIAM W. SCOTT,
Attorney for Appellants in Case No. 924.

W.W.S./M.
1 Encl.

GUION MILLER,
*Attorney for Appellants, Cases
Nos. 925 to 930, Inclusive.*

I hereby acknowledge receipt of a copy of the above letter and its enclosures, this 23rd day of February, 1917.

JNO. W. DAVIS,
Sol. Gen'l.

451 The appellants, Winton and others, in No. 924, intend to rely upon the following points:

1. That the appellants, Winton et al, in case No. 924, had contracts, in a large number,—over two thousand, of Choctaw Indians living in Mississippi, many of whom were later designated by Act of

Congress, as "Mississippi Choctaws", that the Choctaws living in Mississippi could only act individually; that in order to represent the rights of these individuals, it was necessary to represent their rights as a class or group of people, and that Winton and others were authorized and warranted in representing the class or group of Choctaws living in Mississippi and lawfully represented all of those who were admitted by Congress as "Mississippi Choctaws"; that the appellants aforesaid were authorized and warranted in professionally representing the defendants "in the matter of their claim to citizenship in the Choctaw Nation" before the United States Commission to the Five Civilized Tribes, before the United States District Court in Indian Territory, Judge W. H. H. Clayton sitting, before the Supreme Court of the United States, before the Commissioner of Indian Affairs, before the Secretary of the Interior, before the Assistant Attorney General for the Interior Department, before the Attorney General of the United States, before the Senate and House of Representatives of the Congress of the United States, their proper committees, the Committee on Indian Affairs of the House and Senate, and before the members of the Senate and of the Congress concerned in such subject-matter, and before the authorities of the Choctaw Nation, and were fully authorized and warranted professionally in preparing and submitting memorials in behalf of the Mississippi Choctaws, to be presented to the Senate and House of Representatives of the United States in behalf of the Choctaws living in Mississippi, from 1896 to 1906 inclusive; that they did professionally appear and rendered services unavoidably necessary to the recognition of the claim of the Choctaws residing in Mississippi to citizenship in the Choctaw Nation and that for so doing the defendants are entitled to compensation as provided in the jurisdictional acts (34 Stats., 140; 35 Stats. 457, as set out in findings 1 and 2).

2. That the appellants, or some of them, during the period aforesaid, appeared and made professional arguments and filed proper briefs before The United States Commission to the Five Civilized Tribes, the United States District Court, the Supreme Court of the United States, and appeared several times each Congress before the Committee on Indian Affairs of the Senate and House of Representatives, and presented professionally, and as attorneys at law, strictly within the ethics of the profession, the claim of the Choctaws living in Mississippi, to citizenship in the Choctaw Nation, and also appeared before the Commissioner of Indian Affairs and the Secretary of the Interior, the Attorney General of the United States, in the same behalf on numerous occasions when it seemed to be necessary; that the defendants are entitled to compensation for such services under the said jurisdictional acts.

3. That said appellants were always recognized without any question at any time by the officials of the Choctaw Nation, by the United States Commission to the Five Civilized Tribes, by the Commissioner of Indian Affairs, by the Secretary of the Interior, by the Attorney General of the United States, by the Indian Committee of the House and of the Senate, by the United States District Court and by the Supreme Court of the United States, and were permitted

to appear and make arguments before them in behalf of the claim of the Choctaws living in Mississippi to citizenship in the Choctaw Nation west, and prepared arguments, memorials, resolutions, bills, and committee reports in behalf of the claim of the Choctaws living in Mississippi to citizenship in the Choctaw Nation, and are entitled to compensation for professional services rendered under the jurisdictional acts aforesaid.

4. That the professional services rendered as stated in points numbers 1, 2, and 3, were of great value to the Choctaws living in Mississippi, in the matter of their claim to citizenship in the Choctaw Nation; that they were services which were absolutely necessary; that they were services the Choctaws of Mississippi could not render themselves; that the services were strictly professional services, rendered before the executive department, rendered before the judicial departments of the government, and finally rendered before the legislative department of the government, because of the denial of relief by the executive department and by the judicial department; that such services were rendered strictly in accordance with the ethics of the legal profession; that the Choctaws living in Mississippi well knew that such services were being rendered in their behalf and they received the benefits of such services at the hands of these appellants, without at any time indicating that these professional services were being rendered gratuitously, and that these appellants are, under the said jurisdictional acts, entitled to recover from the defendants the full value of such services rendered and expenses incurred in behalf of the Choctaws of Mississippi who recovered the estate.

5. That the services referred to in points 1, 2, and 3, were professional services rendered by the appellants with the full knowledge of the authorities of the Choctaw Nation, of the Government of the United States, and of the Committees of Congress, and were rendered with the full belief on the part of said appellants of their authority to perform such service, their right to appear having never been challenged at any time by the Choctaws living in Mississippi, by the officials of the Choctaw Nation, or the officials of the United States, and that as a matter of good faith they are entitled to compensation for services rendered and expenses incurred in that behalf.

453 6. That irrespective of whether there were any direct binding contractual relations between the Choctaws living in Mississippi as individuals or otherwise, and these appellants, shown by the evidence, the appellants are nevertheless under the said jurisdictional acts entitled to recover for the value of the services actually rendered by them, because they did appear during a period of ten years without question, either by the Choctaws living in Mississippi or by the authorities of the Choctaw Nation or the United States Government, and under the belief that they were authorized to appear, and did render service of the first magnitude.

7. That when the court below held facts urged by the appellants as important and material, to be immaterial, as in the opinion of January 29, 1917, the court below should have fully set out in the

findings of fact the services rendered by these appellants in the matter of the claim of the Choctaws living in Mississippi to citizenship in the Choctaw Nation.

8. That under said jurisdictional acts the services rendered by the appellants in presenting the matter of the claims of the Choctaws residing in Mississippi to Citizenship in the Choctaw Nation to individual members of Congress, individual members of the Committee on Indian Affairs of the Senate and of the House of Representatives, and the officials of the Indian Bureau, Interior Department, the Choctaw Nation and the Attorney General of the United States, the Dawes Commission, entitle these appellants to recover the value of the services rendered and the expenses incurred, whether said services were rendered or expenses incurred in accordance with the request of said officials or any of them, or not.

9. That under the said jurisdictional acts these appellants have the right to recover in this suit for services rendered and expenses incurred in the interest and for the benefit of the Mississippi Choctaws in the matter of their claim to citizenship in the Choctaw Nation, and are entitled to be paid therefor by the Mississippi Choctaws, collectively, distributively, and individually.

WILLIAM W. SCOTT,

Attorney for the Appellants in Case No. 924.

454

927.

Walter S. Field and Madison M. Lindly.

The points on which these appellants rely are:

1. That they were associates of Chester Howe, within the meaning of the Act of References of May 29, 1908.

2. That as set forth in their respective petitions and as established by the evidence, they were under contract with the Bands of the Mississippi Choctaws and with certain individual Mississippi Choctaws to prosecute their claims to citizenship in the Choctaw Nation.

3. That their right thus to appear for and on behalf of the Mississippi Choctaws was recognized by the Commissioner of Indian Affairs, the Secretary of the Interior, the Committees of Congress, the Dawes Commission, and the Federal and Territorial Courts.

4. That they did in fact appear for and represent said Mississippi Choctaws, and render valuable services in the matter of their claim to citizenship in Choctaw Nation, before the Dawes Commission, and the Courts in Indian Territory, and before the Commissioner of Indian Affairs and the Secretary of the Interior, and before the Committees of Congress, and also rendered services by presenting the merits of the claim to individual Senators and Representatives.

5. That these services were legal services and were rendered with the knowledge of the Commissioner of Indian Affairs and to a considerable extent with his co-operation, and were rendered in the full belief on the part of these appellants that they were lawfully authorized to represent the said Mississippi Choctaws.

6. That, irrespective of whether any direct binding contractual relation between these appellants and the Mississippi Choctaws is shown by the testimony, under the Acts of Reference, they would be entitled to recover in this action for the value of the services actually rendered by them.

7. That Findings of Fact should have been made by the Court of Claims setting forth fully the services actually rendered by these appellants and the value of the same as established by the testimony, and the circumstances under which such services were rendered and particularly the facts bearing on the Band contract, and the action of the Commissioner of Indian Affairs in connection with said contract, and his relations with the appellants, Field and Howe, in connection with the presentation of the claim of said Mississippi Choctaws.,

455 8. That these appellants under the Acts of Reference have the right to recover in this suit for services rendered individual Mississippi Choctaws in the matter of their claim to citizenship in the Choctaw Nation.

9. That services rendered in endeavoring to convince individual Senators and Representatives in Congress, are services for which recovery may be had under the Acts of Reference in this case.

GUION MILLER.

Att'y for Appellants.

456

925, 928, & 930.

James S. Bounds, Attorney in Fact for T. A. Bounds, William N. Vernon, and J. J. Beckham.

The points relied upon by these appellants are:

1. That money advanced by them and services rendered by them in removing individual Mississippi Choctaws from Mississippi to Indian Territory, and in maintaining said Indians en route and while awaiting allotments and in securing for said Indians, valuable allotments, should all be taken into consideration in determining their right to recover and the amount of recovery to which they are respectively entitled in this action.

2. That Findings of Fact should have been made by the Court of Claims fully setting forth the facts as to the amount of money so expended, and the amount of services thus rendered, and the value of the same, as established by the evidence.

GUION MILLER.

Att'y for Appellants.

457

926.

John London.

The points on which this appellant relies are:

The points on which this appellant relies are:

1. That with Madison M. Lindly and Walter S. Field, he was the associate of Chester Howe.

2. That, as set forth in his petition and as established by the evidence, he rendered services to the Mississippi Choctaws as a class and to individual Mississippi Choctaws in the matter of their claim to citizenship in the Choctaw Nation for which he is entitled to recover under the jurisdictional acts herein.

3. That Findings of Fact should have been made by the Court fully setting forth the services thus rendered by the appellant, as shown by the evidence, and the value of the same, and that he was an associate of Howe within the meaning of the jurisdictional acts.

GUION MILLER,
Att'y for Appellants.

458

929.

Katie A. Howe, Executrix, for Chester Howe.

The appellant Howe, in addition to the points relied upon by appellants Field and Lindly as above set forth, relies upon the following additional points:

1. That money expended for and services rendered to individual Mississippi Choctaws in removing them from Mississippi to Indian Territory and establishing their rights on arrival there, including money expended for maintenance and location upon allotments are within the meaning of the Acts of Reference, and should be taken into consideration in determining right to recovery and the amount thereof in this action.

2. That Findings of Fact should have been made by the Court of Claims fully setting forth the facts as to the amount of money so expended, and the amount of services thus rendered, and the value of the same as established by the evidence.

GUION MILLER,
Att'y for Appellant.

459 [Endorsed:] U. S. Supreme Court. Dec. Term, 1916. Winton et als., vs. The Mississippi Choctaws. Appeals Nos. 924-930, inclus. Statement of points on which appellants intend to rely and statement designating the parts of record necessary for the consideration thereof. William W. Scott, attorney for appellants in No. 924. Guion Miller, attorney for appellants in Nos. 925-930, both inclusive.

460 [Endorsed:] File Nos. 25,754, etc. Supreme Court U. S., October term, 1916. Term Nos. 924, etc. Wirt K. Winton, Admr., etc., appellant, vs. Jack Amos et al. J. S. Rounds, Admr., etc., app't, vs. Jack Amos et al., etc. John London, appellant, vs. Jack Amos et al. etc. Walker S. Filed et al., appl'ts, vs. Jack Amos et al., etc. J. J. Beckham, appellant, vs. Jack Amos et al., etc. Wm. N. Vernon, appellant, vs. Jack Amos et al., etc. Katie A. Howe, Execx., vs. Jack Amos et al., etc. Specification by appellants of points to be relied upon and designation of parts of record to be printed, with proof of service of same. Filed February 23, 1917.

461 Office of the Clerk Supreme Court U. S. Received Mar. 3,
1917.

W. J. H.
H. T.

H. T. L. E. K.

DEPARTMENT OF JUSTICE,
WASHINGTON, March 1, 1917.

To the Clerk of the Supreme Court, Washington D. C.

SIR: In addition to the parts of the record designated by appellants to be printed in the case of Wirt K. Winton, admr. et al., Nos. 924 to 930, inclusive, October term, 1916, the appellees designate as part of the record to be printed for use at the trial of the case the following:

Findings of fact of the Court of Claims, Nos. 38, 39, 41 and 45, and the conclusions of law and opinion of the court.

Also the following parts of the appendix to the findings of fact of the Court of Claims:

Commencing with Contract No. 2, page 37, and ending with the name "J. E. Arnold" on page 41; the Gillett contract commencing on page 46 and ending at the bottom of page 48, and the Gallaspy and Boyd agreements, pages 53, 54 and 55.

462 Attached hereto is a memorandum of some of the grounds relied upon by the appellees in their designation of the parts of the record to be printed.

Respectfully,

JNO. W. DAVIS,
F. *Solicitor General.*

463 Clerk of the Supreme Court.

Nos. 924 to 930, Incl., October Term, 1916.

Memorandum.

1. Paragraph 2, rule 1, relating to appeals from the Court of Claims, directs that the findings of fact and conclusion of law of the Court of Claims are to be certified to the court as a part of the record upon which the case shall be heard.

2. The conclusion of law dismissing each of the several petitions and intervening petitions (p. 34) is based upon all of the findings of fact made by the Court of Claims, and if any of said findings should be omitted from the transcript of the record, it would necessitate a corresponding change in the conclusion of law and judgment of the Court of Claims dismissing the said petitions.

3. The appellees are entitled to have before the court in the record transmitted by the Court of Claims the findings of fact and conclusion of law, the appendix to said findings of fact, and the opinion of the lower court, in order that the court may see at once everything that was done by the Court of Claims and the facts upon which its actions were predicated, and it follows that if Findings 38, 39, 41 and 45 are omitted from the printed record, there would be no facts to support

the judgment of the Court of Claims in dismissing the petitions of the intervening claimants who did not appeal from said judgment, and would leave in more or less obscurity the discussion of their claims in the opinion of that court (pp. 464 80, 81).

4. Findings of fact numbered 38, 39, and 41, which the appellants desire to have excluded from the printed record, have a direct bearing upon the claims of Winton and the intervening claims of Howe, Field, Lindley and London.

5. Winton and Owen took contracts in 1893 with approximately 1000 Mississippi Choctaws by which they agreed to secure their rights to citizenship in the Choctaw Nation and to participation in the allotment of tribal lands, and the distribution of tribal funds, in consideration of a fee of one-half of the net interest of each allottee in any allotment secured. Winton and Owen, having reached the conclusion that these contracts were not enforceable in the courts by reason of the provisions of the acts of June 28, 1898, and May 31, 1900, which prohibited the encumbrance of such allotments, abandoned them and entered into contracts on a new form beginning June 20, 1901, in a series from 1 to 834, with about 2000 individual Mississippi Choctaws. These contracts were drafted to avoid the provisions of the acts relating to the encumbrance of allotments, and the consideration named was a sum of money equal to one-half the value of the net recovery of land, money, or money values, 465 and the contract further provided for the removal of the Mississippi Choctaws to the Choctaw Nation (Findings 10 and 28.) The removal of the Indians prior to enrollment as citizens of the Choctaw Nation was made a necessary requirement by the legislation of Congress out of which this suit arose.

Of the 1759 Mississippi Choctaws who were enrolled as citizens of the Choctaw Nation, 1578 are defendants in this suit, of whom only 696 individuals had contracts with Winton and Owen. Winton and Owen, although their contracts required them to do so, removed only a few of the Indians, and then abandoned the attempt at removal. They are now claiming compensation for their alleged efforts towards securing legislation by which the rights of the Mississippi Choctaws were recognized by Congress, by suing those Mississippi Choctaws who were removed by the Government and private parties, or who moved themselves. Among the private parties who moved some of the said Indians, or who paid the expenses of their removal, were Joseph W. Gillett, the facts of whose claim are set out in Finding No. 38, and David C. McCalib, the facts in whose claim are set out in Finding No. 41.

6. The appellants Howe, Lindley, Field and London claim their employment by the Mississippi Choctaws through individual contracts taken with said Indians by Hudson and Arnold. Hudson 465 1/2 son sold a large number of such contracts to Joseph W. Gillett and raised a large sum of money as the proceeds of such sale. Howe and Hudson were also intimately connected with the Choctaw-Chickasaw Land and Development Company, the facts of whose claim are set out in Finding No. 39, and the claim of the said

Company is a matter of defense against Howe, Lindley, Field and London, who claimed to be the associates of said Howe.

In addition to the sums paid by the said Gillett to Hudson in connection with the sale of the Mississippi Choctaw contracts see the finding relating to the said Arnold and Hudson, No. 35, page 22, where the court finds that they collected fees from individual Mississippi Choctaws in excess of \$30,000.

For the connection between Findings 38 and 39 see Findings 35, 36 and 42.

7. The appellees have a right to show to the court who were dealing with the Mississippi Choctaws, and how they were dealing with them. That certain persons were making contracts with individual Mississippi Choctaws, citizens of the United States and the State of Mississippi, afterwards citizens of the Indian Territory and the State of Oklahoma (Finding V). That such persons expected to get their compensation from the individual Indians with whom the contracts were made, and were leasing and otherwise occupying their lands and premises with a view to reimbursing themselves for their 466 expenses in the removal of the Indians. That they could have sued, and some did sue, the individual Indians where they lived (Finding 44), and it was in violation of the Constitution of the United States to sue them anywhere else.

467 [Endorsed:] File Nos. 25,754, etc. Supreme Court U. S. October term, 1916. Term Nos. 924 to 930. Wirt K. Winton, Adm'r, etc., and Others, appellants, vs. Jack Amos, et al., etc. Designation by appellees of additional parts of record to be printed. Filed March 3, 1917.

Endorsed on Cover.

File No. 25,754. Court of Claims. Term No. 924. Wirt K. Winton, Administrator of the Estate of Charles F. Winton, Deceased, et al., appellants, vs. Jack Amos and Others, Known as the Mississippi Choctaws.

File No. 25,755. Term No. 925. J. S. Bounds, Attorney in Fact for T. A. Bounds, appellant, vs. Jack Amos and Others, Known as the Mississippi Choctaws.

File No. 25,756. Term No. 926. John London, appellant, vs. Jack Amos and Others, Known as the Mississippi Choctaws.

File No. 25,757. Term No. 927. Walter S. Field and Madison M. Lindley, appellants, vs. Jack Amos and Others, Known as the Mississippi Choctaws.

File No. 25,758. Term No. 928. J. J. Beckham, appellant, vs. Jack Amos and Others, Known as the Mississippi Choctaws.

File No. 25,759. Term No. 929. William N. Vernon, appellant, vs. Jack Amos and Others, Known as the Mississippi Choctaws.

File No. 25,760. Term No. 930. Katie A. Howe, Executrix of the Estate of Chester Howe, Deceased, appellant, vs. Jack Amos and Others, Known as the Mississippi Choctaws. Filed February 8, 1917. File Nos. 25,754-25,760.

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1916

WIRT K. WINTON
Administrator of the
ESTATE OF CHARLES F. WINTON,
Deceased, and Others
vs.
JACK AMOS AND OTHERS KNOWN
AS THE MISSISSIPPI CHOCTAWS

No. ~~927~~

WILLIAM W. SCOTT,
Attorney for Appellants



IN THE
Supreme Court of the United States

OCTOBER TERM, 1916

WIRT K. WINTON <i>Administrator of the</i> ESTATE OF CHARLES F. WINTON, <i>Deceased, and Others</i> vs. JACK AMOS AND OTHERS KNOWN AS THE MISSISSIPPI CHOCTAWS	}	No. 924.
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MOTION FOR WRIT OF CERTIORARI

Comes now the appellants, Wirt K. Winton, administrator of the estate of Charles F. Winton, deceased, and others, by their counsel, William W. Scott, and suggest diminution of the record in this cause, in this, to wit:

1. That the findings of fact made and entered by the Court of Claims on December 7, 1914, and forming a part of the record of said Court is omitted from the transcript.
2. That the findings of fact made and entered by the Court of Claims on May 17, 1915, and forming a part of the record in said Court is omitted from the transcript.

3. That the motion made by the appellants herein (original claimants in the court below) made on August 9, 1915, to amend the findings of fact made by the Court of Claims on May 17, 1915, and forming a part of the record in said Court is omitted from the transcript.

4. WHEREFORE the said appellants, Wirt K. Winton, administrator of the estate of Charles F. Winton, deceased, and others, move the court under Rule 14 to award a writ of certiorari to be issued and directed to the Chief Justice and Judges of the Court of Claims of the United States, commanding them, that searching the records and proceedings in said cause, they forthwith certify to this court those parts of the record so omitted as aforesaid.

Dated this 20th day of March, A. D. 1917.

WILLIAM W. SCOTT,

Attorney for Appellants.

AFFIDAVIT

UNITED STATES OF AMERICA, }
DISTRICT OF COLUMBIA, } To wit:

Personally appeared before the undersigned William W. Scott, who having been first duly sworn on his oath says:

That his name is William W. Scott and that he is the attorney of record for the appellants and was the attorney of record for said appellants, the original claimants, in the court below.

That the said court below made and entered findings of fact on December 7, 1914, and on May 17, 1915, and that on August 9, 1915, the said appellants, claimants in the court below, moved to amend the said findings made on May 17, 1915, in numerous instances, particularly Findings 9, 11, 15, 17, 19, 24, 29, 30, 31 and 33, covering the same questions of fact set out in claimants "*request for findings of fact on certain questions of fact*" made and filed on January 8, 1917, together with claimants motion under Rule 90 for leave to file said "*request for findings of fact on certain questions of fact.*"

Affiant further states that the motion made by the claimants on August 9, 1915, to amend the findings of fact made and entered by the court on May 17, 1915, in many instances requested the court to amend said findings by inserting therein or add thereto certain paragraphs of the findings of fact made on December 7, 1914, to which the attorney for the defendants had made no objections as provided for in the *per curiam* opinion attached to the said findings of fact made and entered by the court on December 7, 1914, and that the claimants said "*request for findings of fact on certain questions of fact*" covered the same subject matter or questions of fact as did also claimants said motion

of August 9, 1915, to amend the findings of fact made May 17, 1915.

Affiant further states that on or about February 6, 1917, after action was taken by the court below on claimants motion for new trial and on claimants said "request for findings of fact on certain questions of fact" as shown by the court's opinion entered January 29, 1917, which opinion forms part of the transcript, the appellants, as claimants in the court below, moved the court to direct and authorize the certification as part of the transcript the said findings of fact made May 17, 1915, and claimants motion, or certain parts thereof, to amend said findings and which motion was overruled by the court.

Affiant further states that he believes that the matter and things set forth in the above motion for writ of certiorari should be made a part of the record in this case in order that all the questions involved may be fully and fairly presented to the court.

Further this affiant saith not.

WILLIAM W. SCOTT.

Subscribed and sworn to before the undersigned a Notary Public in and for the District of Columbia this 19th day of March, A. D. 1917.

WADE B. HAMPTON,
Notary Public.

[SEAL]

BRIEF IN SUPPORT OF MOTION FOR WRIT OF CERTIORARI

The appellants desire that the findings of fact made December 7, 1914, and the findings of fact made May 17, 1915, and claimants motion to amend the findings of fact made May 17, 1915, be made a part of the transcript in order to show to your Honorable Court that the questions of fact presented by claimants "request for findings of fact on certain questions of fact" *covered the same questions of fact* covered by claimants said motion to amend the findings of fact and that the court below is in error in stating that said "requests now made have not heretofore been requested in either narrative or alternative form and the reason for this omission does not appear" as said by the court below at the top of page 6 of the opinion filed therein January 29, 1917.

Appellants desire the transcript to set forth the findings of fact made December 7, 1914, in order to show to your Honorable Court that certain parts of said findings (unobjected to by the defendants as required by the opinion of the court attached to said findings of December 7, 1914), were omitted from the findings of fact made May 17, 1915, and that appellants said motion of August 9, 1915, to amend said findings in certain instances presented to the court the same facts as those set out in claimants "request for findings of fact on certain questions of fact" and in many instances were facts which the court had found and set out in the tentative findings of December 7, 1914, and omitted or not set out in the findings of May 17, 1915, or the findings of May 29, 1916.

The court below *had previously refused* the intervenors, Walter S. Field and others, a bill of exceptions and the purpose of claimants "request for findings of fact on certain

questions of fact" was to lay the foundation for an application to your Honorable Court for an order on the court below to make findings of fact on the questions of fact therein set out, the course outlined by your Honorable Court in the case of *Driscoll vs. The United States*, 131 U. S. App., CLIX, the court prior to that time not having held that said facts were immaterial and incompetent as that court did later hold in its said opinion of January 29, 1917.

In short the contention of the appellants is that the court below had, prior to January 8, 1917, been requested by the claimants to make findings of fact on the questions of fact set out in claimants "request for findings of fact on certain questions of fact" and this can only be verified by having the transcript contain the said findings of fact and claimants said motion to amend said findings of fact and the verification of appellants contention will prove to your Honorable Court that the court below is in error when it states said requests had not prior thereto been made to the court.

That the court below is in error as above stated will clearly appear by comparing the claimants request with the findings made by the court. For instance, the court referring to Finding 9 and that part of "claimants request for findings of fact on certain questions of fact" pertaining to said finding, says:

"Whether or not the original contract, made June 23, 1896, and modified July 23, 1896, between Charles F. Winton and Robert L. Owen, provided that said Owen was to represent the claims of the Mississippi Choctaws before the proper officers of the United States and Indian Governments, and in which representation the said Winton was to assist and co-operate with the said Owen?"

"Finding IX of the court is exactly the same as it appeared in the tentative findings of December 7, 1914. Counsel for claimant, in his brief filed January 21, 1915, made no objection to the same, and in open court on the oral argument stated "no objections."

The above request is taken by the court from the "claimants request for findings of fact on certain questions of fact" and the paragraph immediately following it is the court's comment thereon and while this within itself is technically correct *the fact nevertheless remains that the claimants did prior to January 8, 1917, the date of the filing of claimants "request for findings of fact on certain questions of fact" move to amend said Finding 9 by requesting the court to insert the same words as those appearing in said request in language as follows:*

FINDING IX

"Amend Finding IX, paragraph —, line 7, by inserting after the words "funds" the following:

"And represent the claims of those people (Mississippi Choctaws) before the proper officers of the United States or Indian Governments and in which representation the said Winton was to assist and co-operate with the said Owen, R. 320-321, Ex. 11."

There are many other instances showing that the court below is in error in stating that "the request now made [referring to the requests made in claimants request for findings of fact on certain questions of fact filed January 8, 1917], have not heretofore been requested in either narrative or alternative form and the reason for this omission does not appear." This is particularly true as to the subject treated in the court's Findings 11, 15, 17, 19, 24, 29, 30, 31 and 33, as will be shown by comparing claimants said motion to amend said findings and said findings with

claimants said request and this can only be done by having claimants said motion and said findings of December 7, 1914, and May 17, 1915, made a part of the transcript for the consideration of your Honorable Court.

It is, therefore, respectfully submitted that the writ of certiorari as requested should issue.

WILLIAM W. SCOTT,
Attorney for Appellants
in Case No. 924.

I hereby acknowledge the receipt of a copy of the above motion, affidavit and brief this 21st day of March, A. D. 1917.

JOHN W. DAVIS,
Solicitor General of the U. S.

I hereby consent to the allowance of the above motion.

GUION MILLER,
Attorney for Appellants in
Nos. 925, 926, 927, 928, 929, 930.



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IN THE
Supreme Court of the United States

OCTOBER TERM, 1918

WIRT K. WINTON,
Administrator of the
ESTATE OF CHARLES F. WINTON,
Deceased, and Others,
Appellants,

vs.

JACK AMOS AND OTHERS KNOWN
AS THE MISSISSIPPI CHOCTAWS,

No. **6** **15**

**APPELLANTS' MOTION TO REMAND FOR
ADDITIONAL FINDINGS**

WILLIAM W. SCOTT,
Attorney for Appellants.

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1918

WIRT K. WINTON, <i>Administrator of the</i> ESTATE OF CHARLES F. WINTON, <i>Deceased, and Others,</i> <i>Appellants,</i>	} No. 123
vs. JACK AMOS AND OTHERS KNOWN AS THE MISSISSIPPI CHOCTAWS.	

**APPELLANTS' MOTION TO REMAND FOR
ADDITIONAL FINDINGS.**

Comes now the appellants, Wirt K. Winton, administrator of the estate of Charles F. Winton, deceased, and others, by their counsel, William W. Scott, and moves the Court to remand this case to the Court of Claims for additional findings, to wit:

Findings of fact on the certain questions of fact set out in the motion made by the claimants below (appellants here) for findings of fact on certain questions of fact as appears in the record commencing with sub-head "IX" on page 213 and ending with the questions (A, B, C, D, E,

F) of fact following sub-head "XXXII" on page 231 of the Record.

And a finding of fact on the question of whether or not the motion made by claimants (appellants here) in the Court below on August 9, 1915, to amend the Court's findings of fact of May 17, 1915, contained requested amendments to findings Nos. 9, 10, 11, 12, 15, 16, 17, 18, 19, 20, 24, 25, 26, 27, 28, 29, 30, 31, 33 and 43 the same as set out in the appendix annexed hereto. Said amendments or requested findings of fact are set out in full in the appendix filed herewith, as a part hereof.

And also a finding of fact on the question whether or not the claimants (appellants here) on February 6, 1917, moved the Court of Claims to authorize and direct the certification, as a part of the transcript, the findings of fact made by the Court below on May 17, 1915, and claimants' motion made on August 9, 1915, to amend said findings of fact, and if so, the action taken thereon by the Court below.

And also to findings of fact on the questions of fact as to whether or not Winton and associates prepared memorials and presented them to Congress in behalf of the Mississippi Choctaws other than the two memorials set out in the appendix of the opinion of the Court of Claims, R. 155-159, which were presented to and made a part of the record of the case in the Court below, at or before trial of said case, and if so are they the memorials set out in the appendix filed herewith and described as follows:

Memorial petition on behalf of the Mississippi Choctaws, September 1, 1897, signed by C. F. Winton, Counsel.

Petition of the Mississippi Choctaws, presented to Congress February 13, 1900, and being H. R. Document No. 426, 56th Congress, first session.

Memorial of the full-blood Mississippi Choctaws, rela-

tive to their rights in the Choctaw Nation, presented to Congress April 24, 1902, and being Senate Document No. 319, 57th Congress, first session.

Memorial of Mississippi Choctaw Indians, presented to Congress March 15, 1904, and being H. R. Document No. 614, 58th Congress, second session.

See appendix filed herewith.

Dated this 21st day of October, A. D. 1918.

WILLIAM W. SCOTT,
Attorney for Appellants.

AFFIDAVIT.

UNITED STATES OF AMERICA, }
DISTRICT OF COLUMBIA } To wit:

Personally appeared before the undersigned William W. Scott, who having been first duly sworn on his oath says:

That his name is William W. Scott and that he is the attorney of record for the appellants in the case, Wirt K. Winton, administrator, *vs.* Jack Amos and others, now pending in the Supreme Court of the United States and being No. 123 on the docket for the October term, 1918, and that he was the attorney of record for said appellants, the original claimants, in the Court below.

That the said Court below made and entered findings of fact on December 7, 1914, and on May 17, 1915, and that on August 9, 1915, the said appellants, claimants below, moved the Court to amend the findings made on May 17, 1915, in numerous instances, particularly findings 9, 11, 15, 17, 19, 24, 29, 30, 31 and 33. That the questions of fact covered by said amendments were the same questions of fact set out in the claimants' "request for findings of fact on certain questions of fact," R. 213-231, made and filed in the Court of Claims on January 8, 1917.

Affiant further states that the said motion made by the claimants on August 9, 1915, to amend said findings of fact entered on May 17, 1915, in certain instances requested the Court to amend said findings by making them conform to certain findings of fact made by the Court on December 7, 1914, to which the attorney for the defendants had *made no objections* as provided for in the *per curiam* opinion attached to said findings of December 7, 1914. Some of the questions of fact set out in the claimants "request for findings of fact on certain questions of fact," covered the same subject matter or questions of fact found by the Court on December 7, 1914, and not objected to by the defendants as before stated, but omitted from or not contained in the findings of fact made by the Court on May 17, 1915.

Affiant further states that on or about February 6, 1917, after action was taken by the Court below on claimants' motion for new trial and claimants' said "request for findings of fact on certain questions of fact," as shown by the Court's opinion of January 29, 1917, R. 201, the claimants moved the Court to authorize and direct the certification as a part of the transcript, the said findings of fact made by the Court on December 7, 1914, and on May 17, 1915, and the claimants' motion made August 9, 1915, to amend said findings of fact, and that said motion was overruled.

Affiant further states that he is a member of the Bar of the Supreme Court of the United States and in good standing, and that he believes that that part of the record of this case in the Court below set forth in the motion to remand to which this affidavit is attached should be made a part of the record in this Court in order that all the ques-

tions involved may be fully and fairly presented to the Court.

Further this affiant saith not.

WILLIAM W. SCOTT.

Subscribed and sworn to before the undersigned a Notary Public in and for the District of Columbia this 21st day of October, A. D. 1918.

W. CLARENCE DUVALL,
Notary Public.

BRIEF IN SUPPORT OF MOTION TO REMAND.

The appellants desire that the claimants' motion, made August 9, 1915, to amend the findings of fact made May 17, 1915, be made a part of the record in this Court in order to establish the fact that the questions of fact presented by claimants' "request for findings of fact on certain questions of fact" covered the same questions of fact set out by claimants' said motion to amend and to show that the Court below is in error in stating that said "requests now made have not heretofore been requested in either narrative or alternative form and the reason for this omission does not appear" as it did in the opinion of January 29, 1917, R. 206.

The findings of fact requested by claimants in their motion to amend made on August 9, 1915, are set out in full in an appendix attached hereto and the Court's attention is respectfully invited thereto. The requests for findings of fact made by the claimants in their "request for findings of fact on certain questions of fact" are fully set out in the record. R. 213-231. By examining the subject matter of facts set out in claimants' said motion of August 9, 1915, it clearly appears that they cover the same subject matter or questions of fact as does the claimants'

"request for findings of fact on certain questions of fact" made January 8, 1917.

The situation in the Court below which made it necessary to present to that Court a "request for findings of fact on certain questions of fact" in short was as follows:

It is the practice in the Court of Claims to consider and treat a motion for new trial and a motion to amend findings of fact as a new trial, and that practice was followed in this case. The Court below prior to the last trial of the case was requested to make certain findings, that is, was requested to make findings on certain questions of fact and failed to act on said request.

The Court in its findings of December 7, 1914, found certain facts and attached thereto an order as follows:

"Forty-five (45) days from this date will be allowed to interested parties to file objections and findings and briefs. Thirty (30) days will then be allowed the defendants and all other parties interested to reply thereto, and the case is set for a hearing Tuesday, February 23, 1915." R. 202.

The defendants filed objections to certain findings and parts of findings made by the Court, and made no objection to certain parts of the findings, indicating that those parts of the Court's findings were acceptable and established by the evidence. The claimants likewise made no objection to some of the same parts of the findings. The findings of fact handed down by the Court after the next trial of the case omitted those very parts of the findings to which the claimants, as well as the defendants had made no objection. The claimants' said motion to amend the findings made on August 9, 1915, in part requested the Court to conform the findings made on May 17, 1915, so as to set forth the facts of the Court's previous findings which had not been objected to by either party. For an instance of this kind the Court's attention is invited to that part of the

claimants' motion to amend which referred to finding 11, as set out in the appendix page —.

It was the "request for findings of fact on certain questions of fact" which drew forth the opinion of January 29, 1917. The Court below had, prior to the trial of the case, been requested to make findings of fact on the same subject matter covered by the claimants' said request (R. 213 to 231) *and failed to make findings of fact thereon and failed to rule on the competency or materiality of the facts so requested.* The purpose, therefore, of the "request for findings of fact on certain questions of facts" was to obtain from the Court a ruling on the competency or materiality of the facts theretofore and therein requested. The ruling was obtained and made by the Court in its opinion under date of January 29, 1917. R. 201 to 232.

The Court below styles the "request for findings of fact on certain questions of fact" as an extraordinary proceeding. The situation in the Court below was extraordinary and therefore called for prayers for extraordinary relief.

On August 14, 1915, exceptions to the Court's findings of fact and bills of exceptions were filed in behalf of one of the claimants in the Court below, and on August 15, 1915, similar relief was requested in behalf of another claimant. Again on August 16, 1915, exceptions to findings of fact and bill of exceptions were filed on behalf of another claimant. The Court, however, consistently refused the claimants' bills of exceptions or failed to act thereon. R. 94.

On November 15, 1915, the defendant filed a brief opposing granting the claimants' bills of exceptions, and on December 6, 1915, the Court fixed February 1st as time when all motions in the case would be heard. The motions for bills of exceptions were heard and the Court failed to allow any claimant a bill of exceptions or to act thereon. This being the status of the proceeding on January 8, 1917,

these appellants as claimants below presented to the Court in the nature of a bill of exception a "request for findings of fact on certain questions of fact." The Court acted thereon as shown in the opinion of January 29, 1917. R. 201. No action was taken on the exceptions to the Court's findings of fact and bills of exception theretofore filed by the various claimants.

It is, of course, here contended that the Court below was in error when it stated that "it is likewise obvious that from the express allegation of the motion (referring to claimants' request for finding of fact on certain questions of fact") that the requests now made have not heretofore been requested in either narrative or alternative form and the reason for this omission does not appear." R. 206.

The claimants' motion made on August 9, 1915, to amend the findings of fact which is set out in the appendix, will show that the Court below is in error in making the above statement. The claimants' said motion made on January 8, 1917, contains citations to the record in the Court below where requests covering the same questions of fact had theretofore been made by the claimants. The Court having failed to make findings on the questions of fact in the request presented to it by these appellants, and having failed to act on the exceptions to the findings of fact and bills of exceptions filed in behalf of other claimants, these claimants on January 8, 1917, took the only other course left to protect their rights and presented to the Court their "request for findings of fact on certain questions of fact" in the nature of a bill of exceptions. Said request is a part of the record, R. 213 to 231, and sets out the facts fully enough for this Court to pass on the question as to whether or not they are material and competent, that is, is it material and competent to show what kind of services and the value thereof the appellants rendered the defendants. The

Court below undoubtedly is the judge of the facts in the case but it is respectfully submitted that there should be and must be some way open to a claimant in that Court to protect his rights and interest when the Court fails to make findings on questions of fact presented to it. Bills of exceptions having been denied in this proceeding it was necessary for their claimants to seek another procedure and this they did by putting the same questions of fact, which had prior thereto been presented to the Court, squarely before the Court for findings thereon or a ruling as to their competency and materiality. This the motion or request of January 8, 1917, did, and it is here contended that said request should be considered and treated by this Court in the nature of and as a bill of exceptions.

The rules of practice in the Court of Claims is not full on the question of procedure when the Court fails to make findings on questions of fact presented to it. It is, however, submitted that the decisions of this Court on questions of such procedure is full enough to warrant the statement that either course attempted to be taken by the claimants in the Court below is within the rules and within the rights of a claimant in that Court. Either course would present fully and fairly the question of the competency or materiality of a fact to the question involved and it is submitted that this Court and not the Court below is the final authority to pass upon the materiality or competency of a fact.

If a claimant in the Court of Claims is not entitled to exceptions to the findings made by the Court and is not entitled to present to that Court a "request for findings of fact on certain questions of fact" in the nature of a bill of exceptions after that Court had failed to make findings of fact on questions previously presented to it and after that Court failed to act on exceptions to its findings and

bill of exceptions in order that the materiality of a fact or the competency of a fact might be presented to this Court, the decision of the Court of Claims would be final and there would be no other way open for him to have this Court review rulings of the Court of Claims on such questions.

In United States vs. Adams, 9 Wall., 661, this Court said:

"If that Court (Court of Claims) should refuse, with proper evidence before it, to find a material fact desired by either of the parties, the proper remedy would be to request that such findings be made, and to except in case of refusal."

-- The course outlined by this Court in the Adams case as above stated is the course followed by the claimants in the Court below. The Court had failed to make findings on questions of fact presented to it as set out in the motion to amend made on August 9, 1915, the claimants following the procedure outlined as above and presented to the Court on January 8, 1917, their "request for findings of fact on certain questions of fact" in the nature of a bill of exceptions. This course was taken instead of filing exceptions to the findings of fact and the bill of exceptions for the reason that the Court below had failed to act on the exceptions and bill of exceptions filed in behalf of other claimants as hereinbefore stated.

"The fifth (rule as to appeals from the Court of Claims) permits either party to call for a finding upon special question deemed material to the judgment in the case, and, if refused, to ask this court to pass upon the materiality of the fact alleged, and should it be considered material, to send down, for

the findings. Such is the construction given the rules in *Mahan vs. N. Y.*, 14 Wall., 112. The object is to present the question here as upon an exception to the ruling of the court below in respect to the materiality of the fact. For that purpose it must have been submitted to the court in a written request as provided in the rule." *Driscoll Case*, 131 U. S.

"If the Court of Claims refuses to find as prayed, the prayer and refusal must be made part of the record, so that this court can determine whether the question is one so necessary to the decision of the case that it will send it back for such finding." *Mahan vs. U. S.*, 14 Wall., 109.

"On an appeal, the parties were entitled to have all the facts proved in the case before the court below, in the judgment of the court truly found, and stated in the record, that either deemed material to the decision; and as we have seen, the remedy is ample to correct any mistakes committed, if applied for prior to the hearing in this court." *U. S. vs. Adams*, 8 Wall., 654.

The same rule applies to Admiralty cases. In *Duncan vs. the Francis Wright*, 105, U. S., 583, this Court held:

"If the Circuit Court neglects or refuses on request to make a finding, one way or the other, on a question of fact material to the determination of the cause, when evidence had been addressed on the subject, an exception to such refusal presented by a bill of exceptions, may be considered here on appeal."

So too, if the court against remonstrance finds a material fact not supported by any evidence.

"In the one case the refusal to find would be equivalent to a ruling that the fact was immaterial, and in the other that there was some evidence to prove what is found when in truth there was none. Both these

are questions of law and proper subjects for review in an appellate court."

Whether or not circumstantial facts

"establish the ultimate fact to be reached is, if a question of fact at all, to say the least, in the nature of a question of law. * * *

"The inquiry thus presented is as to the legal effect of facts proved, not of the evidence given to make the proof, and the question of practice to be settled is, whether under our rule the judgment of the Court of Claims, as to the legal effect of what may perhaps, not improperly be called the ultimate circumstantial facts in a case, is final and conclusive, or whether it may be brought here for review on appeal. * * *

"To avoid misapprehension in the future we take this opportunity to say that we do not only think such a judgment may be reviewed here, if the question is properly presented, but when the rights of the parties depend upon circumstantial facts alone, and there is no doubt as to the legal effect of the facts it is the duty of the court, when requested, to so frame its findings as to put the doubtful question in the record. After that the question is as to the effect of the facts, and when the evidence in a case had performed its part and brought all the facts that have been proved, these facts thus established are to be grouped and their legal effect as a whole determined." *U. S. vs. Puch*, 99 U. S., 265.

The Court below referring to Finding 9, R. 213 and that part of "claimants' request for findings of fact on certain questions of fact" pertaining to said finding, says:

"Whether or not the original contract, made June 23, 1896, and modified July 23, 1896, between Charles F. Winton and Robert L. Owen, provided, that said

Owen was to represent the claims of the Mississippi Choctaws before the proper officers of the United States and Indian Government, and in which representation the said Winton was to assist and co-operate with the said Owen?"

"Finding IX of the court is exactly the same as it appeared in the tentative findings of December 7, 1914. Counsel for claimant, in his brief filed January 21, 1915, made no objection to the same and in open court on the oral argument stated 'no objections.' "

The above request is taken by the Court from the "claimants' request for findings of act on certain questions of fact." The paragraph last above following it is the Court's comment thereon and while this within itself is technically correct *the fact nevertheless remains that the claimants did prior to January 8, 1917, the date of the filing of claimants' "request for findings of fact on certain questions of fact," move to amend said Finding 9 by requesting the Court to insert the same words as those appearing in said request in language as follows:*

FINDING IX.

"Amend Finding IX, paragraph 7, line 7, by inserting after the words 'funds' the following:

"And represent the claims of those people (Mississippi Choctaws) before the proper officers of the United States or Indian Governments and in which representation the said Winton was to assist and co-operate with the said Owen."

This request was made Aug. 9, 1915.

There are other instances showing that the Court below is in error in stating that the "request now made (referring to the requests made January 8, 1917), have not heretofore been requested in either narrative or alternative form and

the reason for this omission does not appear." This is particularly true as to the subjects treated in the Court's Findings 11, 15, 17, 19, 24, 29, 30, 31 and 33.

**REVIEW OF THE QUESTIONS OF FACT
WHICH THE COURT BELOW HELD
IMMATERIAL IN THE OPINION
OF JANUARY 29, 1917.**

Referring to the questions of fact presented to the Court under Section "A," sub-head "XI," R. 216, the Court held that the questions there presented were immaterial. The fact is that Mr. Sherman was Chairman of the Committee on Indian Affairs of the House of Representatives at the time the legislation in question was enacted. It was before that committee that Mr. Owen, associate of Winton made argument on the question of the rights of the Mississippi Choctaws to citizenship in the Choctaw Nation. As a result of the hearing Mr. Sherman presented certain amendments favorable to the rights of the Mississippi Choctaws as committee amendments. It was therefore very material to the issues involved to show that Mr. Sherman was chairman of that committee at that time.

The questions presented in Sections "B," "C," and "D," under the same sub-head "XI," R. 216-217, were also held by the Court below to be immaterial.

The questions of fact covered by these three questions relate to the *professional work performed* by Mr. Owen in advocating before proper authorities the enactment of legislation in behalf of the Mississippi Choctaws. The Court of Claims made tentative findings on December 7, 1914. The defendants made no objections to certain findings of fact, but when the facts were handed down later on May 17, 1915, findings on those very questions of fact to which no objection had been made were omitted and not set out

in the Court's findings. This made it necessary for the claimants to request the Court to amend their findings by inserting a paragraph in finding "XI." The findings omitted by the Court on which question it later failed to make a finding and held to be immaterial, set out the fact that Mr. Owen submitted statements, documents and a written argument to Mr. Williams, a Member of the House of Representatives, and that "as a result of statements made and documents and arguments submitted by him, said Owen, convinced Representative Williams of the rights of said Mississippi Choctaws to share the privileges of Choctaw citizens in the Choctaw Nation." It is respectfully submitted that facts showing the preparation of argument, oral and written argument, advocating the rights of the Mississippi Choctaws and presenting that argument, oral and written, as a lawyer would present it and the only way he could professionally present it to Mr. Williams, *in accordance with the latter's request*, is certainly a material fact in this case and shows a part of the professional services rendered by Mr. Owen as attorney for the Mississippi Choctaws and does not come within the class of services which controlled the Court in the Trist case, *supra*.

The Court's attention is invited to the questions of fact presented to the Court under the subhead "XXIII," R. 221, and it is respectfully submitted that if the record in the Court below shows that Senator Walthall made a statement on the floor of the Senate in presenting an amendment providing relief for the Mississippi Choctaws that said amendment was presented at the instance of the representative of the Mississippi Choctaws, it is material to the issues involved in this case that the findings show that fact.

The memorial referred to in section "B," of this request R. 221, that is, the memorial of April 4, 1900, which the Court says is set out in the findings, cannot be found in

the appendix R. 133. The appendix contains only two memorials, the memorials of December, 1896, and January, 1897, R. 155-159. The Court does, however, in finding "XXIII," R. 109, set out one paragraph taken from the Winton memorial of April 4, 1900, and by comparing that paragraph with the paragraph which the same finding says the Indian Appropriation Act of May 31, 1900, contained, the Court will find that Winton did in that memorial originate and advocate that legislation. The Court, however, says that "the record is silent" on this fact, R. 221, section "A" under finding "XXIII," and concluded by saying that if the fact was found it would be immaterial.

Under the sub-head "XXIX," R. 223, the Court was requested to make a finding on the question as to whether or not Winton and associates had prepared memorials advocating the rights of the Mississippi Choctaws to citizenship in the Choctaw Nation, and whether or not they caused these memorials to be presented to Congress. The Court had already found that Winton and associates had prepared three memorials advocating the rights of the Mississippi Choctaws and set out two of the said memorials in the appendix and referred to a third and fourth in the findings, R. 101, 109. These memorials speak for themselves and it is respectfully submitted undoubtedly establishes the fact which is one of the most important facts in the present case, that Winton and associates rendered *professional services* in behalf of the Mississippi Choctaws and that the class of services which these memorials show that Winton and associates did render are not such services as controlled the Court when the Trist case *supra* was decided.

The second paragraph on page 224 of the record requested the Court to find whether or not "Mr. Owen was recognized by the Congress, members of Congress and other officials of the Government and the Choctaw Nation, as the

attorney for the Mississippi Choctaws in their effort to obtain their rights to citizenship in the Choctaw Nation then made before Congress and its committees."

The Court held the facts covered by the above request immaterial.

The allegation of the petition is that Winton, Owen and associates were the attorneys for the Mississippi Choctaws and it is respectfully submitted that it is material and competent to the issues involved for the Court to find whether or not Winton and associates were the recognized attorneys for the Mississippi Choctaws.

The question of fact presented to the Court as set out on page 228 of the record in section "A" of finding "XXXI," as to whether or not the services rendered from 1898 to 1906, inclusive, by Winton and associates in behalf of the Mississippi Choctaws has been paid for, the Court held to be immaterial. The Court did not hold nor find that Winton and associates rendered no services to the Mississippi Choctaws during this period, but simply held the fact presented by their request to be immaterial, which it is contended here is in error.

Without taking up each question of fact presented to the Court by claimants' "request for findings of fact on certain questions of fact" it is submitted that this Court can from the statement of facts therein set out rule on the question of their competency or their materiality to the questions involved. If this Court should hold that these questions or any of them are material then the case should be remanded to the Court below with instructions to make findings thereon.

It is not sufficient for the Court below to simply hold or conclude from the evidence that the petition should be dismissed. The findings of fact made by the Court below should show the work, the character of the work and the

extent thereof and its value to the Mississippi Choctaws and then rule on the competency or materiality of such facts and as to whether or not the petition should be dismissed thereon. A conclusive or ultimate fact alone is not sufficient. The primary facts showing the work, the character and value thereof should be set out in the findings in order that this Court may pass upon whether or not the work performed comes within the ruling laid down by this Court in *Trist case supra*. The question as to what the findings of fact should show was before this Court in the case of *Shaw vs. U. S.*, 93, *U. S.*, 235, wherein it was said:

"A finding in the nature of special verdict which states simply that a vessel 'was impressed into the military service of the United States by A. B., quartermaster,' is defective in not setting forth the circumstances which would enable the Supreme Court to determine whether the vessel was obtained by impressment or contract."

A recent case in which the Court of Claims failed to make full findings on questions of fact presented by the record is that of *Ripley vs. U. S.*, 220, *U. S.*, 491; *id.* 222, *U. S.*, 144, to which the Court's attention is respectfully invited.

In findings "XX" and "XXVII" the Court states that the work of Commissioner McKennon in identifying the Indians, was interfered with and retarded by Winton, R. 107-108 and 111. In another branch of this case in finding "XLIII," R. 130-132, the Court finds that Sullivan and Neill had been employed by Winton while he was in the South and while Commissioner McKennon was there, to bring Mississippi Choctaws before Mr. McKennon for identification and states further that Sullivan and Neill "also co-operated with said Winton in bringing said Indians and their witnesses before Commissioner McKennon for identification

and enrollment at the hearing conducted by him in Mississippi in 1899," R. 130.

In this same finding "XLIII," section "V," R. 131-132, the Court states that "during the month of March, 1903, said Sullivan and Neill in further pursuance of their said employment (with Winton and associates) moved twenty-two Mississippi Choctaws from Mississippi to the Indian Territory and were reimbursed the amount of their expenses by Robert L. Owen."

The facts found by the Court in finding "XLIII" as above referred to are *inconsistent* with the facts found by the Court in findings "XX" and "XXVII." In finding "XLIII" the Court very clearly finds that Sullivan and Neill, employees of Winton and associates, co-operated with "and assisted said Winton in bringing said Indians and their witnesses before Commissioner McKennon for their identification and enrollment at the hearing conducted by him in Mississippi in 1899." R. 130. In findings "XX" and "XXVII," however, the Court finds the contrary and finds that Winton did not assist in that work but retarded it.

In *Lawrence's case*, 8th C. Cls., 252, the Court of Claims held that

"As to facts prayed for by the parties not allowed by the Court, they will be certified up with the reasons of the Court for its refusal."

On February 6, 1917, after action was taken by the Court below on claimants' motion for new trial and on claimants' said "*request for findings of fact on certain questions of fact*" as shown by the court's opinion entered January 29, 1917, which opinion forms part of the transcript, the appellants, as claimants in the court below, moved the Court to direct and authorize the certification as part of the transcript the said findings of fact made December 7, 1914 and

May 17, 1915, and claimants' motion of August 9, 1915, on certain parts thereof, to amend said findings which motion was overruled by the Court.

It is therefore respectfully submitted that this motion should prevail and the case remanded to the Court below for additional findings.

WILLIAM W. SCOTT,
Attorney for Appellants.

(See appendix hereto annexed).

I hereby acknowledge the receipt of a copy of the above motion, affidavit, brief and appendix this..... day of October, A. D. 1918.

.....
Solicitor General of the U. S.

APPENDIX
TO APPELLANTS' MOTION TO REMAND FOR
ADDITIONAL FINDINGS

That part of the claimants' motion made on August 9, 1915, to amend the findings of fact made by the Court of Claims on May 17, 1915, appears on pages 77 to 167 inclusive, of said motion, and is as follows:

FINDING 9.

Amend finding nine, paragraph 1, line 7, by inserting after the word "*funds*," the following:

and represent the claims of these people (Mississippi Choctaws) before the proper officers of the United States or Indian Governments, and in which representation the said Winton was to assist and co-operate with the said Owen. R. 320-321, Ex. 11.

The above amendment is based upon the contract between Winton and Owen, and uses practically the same language as does said contract. The finding as now stated does not state in any way whatever the services to be rendered by Owen and in fact it infers that Owen was only to provide the funds. It is therefore very material that the Court should make this amendment in order to show what services were contemplated to be rendered by Owen at the very beginning of the struggle, or the "long and somewhat furious contest" to obtain for the Mississippi Choctaws rights to citizenship in the Choctaw Nation?

FINDING 10.

Amend finding ten, lines five and six, by striking therefrom the following words:

some of said contracts being taken in the name of said Winton, some in the name of said Owen, and

some in the name of Charles S. Daley, of New York City.

This same amendment was proposed in the plaintiffs' Motion to Amend the Tentative Findings of Fact, and that it should be made was *practically admitted* in the Reply filed thereto by counsel for the defendants. Plaintiffs' Motion, Vol. 10, p. 39; Defendants' Reply, Vol. 10, p. 325.

FINDING 11.

Amend finding eleven, paragraph 2, line 1, by striking out the word "*spoke*" and insert in lieu thereof, the following:

presented an oral argument and written brief (the latter in accordance with the request of Mr. Williams),

R. 335-6, Question 3, R. 542, Question 19, R. 548, Question 9, R. 552-3, letter of Mr. Williams to Mr. Wright, dated April 12, 1909, R. 554-5; letter of Mr. Williams to Mr. Thompson, dated April 12, 1909.

Further amend finding eleven by striking out the third paragraph thereof, for the reason that the facts stated in said paragraph are not established by the Record, and insert in lieu thereof the first two sentences of the eleventh tentative finding made by the Court on December 7, 1914, and to which neither the attorney for the plaintiff nor for the defendant has at any time heretofore objected, which reads as follows:

At the time of the making of these contracts by Winton and Owen, the Mississippi Choctaws, full bloods, were extremely poor, living in insanitary conditions, and working at manual labor for daily wages. Their children could not attend schools provided for the whites, and they were denied all social and politi-

cal privileges. In the year 1896 said Owen approached Hon. John Sharp Williams, then a Representative in Congress from the Fifth Congressional District of Mississippi, wherein practically all full blood Choctaws in Mississippi then resided, and as the result of statements made and documents and arguments submitted by him (the said Owen) said Owen convinced said Representative Williams of the rights of said Mississippi Choctaws to share the privileges of Choctaw citizens in the Choctaw Nation.

The above paragraph, taken from the tentative Findings, is in all respects established by the evidence, and inasmuch as counsel for the Defendants, in his Motion filed January 28, 1915, moved to amend in certain particulars, said eleventh finding, and did not object to any of the facts stated in said paragraph, is sufficient to now warrant the statement that he admitted that the Record evidence established the facts therein stated. Vol. 10, p. 232.

FINDING 12.

Amend finding twelve, paragraph 1, line 2, by striking out the words, "a number of," and insert in lieu thereof the word, "the." Ex. I, R. L. O., p. 52.

Further amend finding twelve, paragraph 1, line 5, by striking out the words, "a number of," and insert in lieu thereof the word, "the." Ex. 1, R. L. O., p. 54.

An examination of the two memorials above referred to in support of these two amendments, finding twelve, shows that Congress was memorialized in behalf of *the* Mississippi Choctaws—that is, in behalf of legislation giving relief to *all* Mississippi Choctaws.

The first memorial referred to in said finding is entitled "*Memorial of the Mississippi Choctaws.*"

The second memorial is entitled "*Memorial of Mississippi*

Choctaws," and both memorials are signed by "C. F. Winton, Counsel."

The third memorial referred to in the second paragraph of said finding is somewhat fuller than the other two memorials and on the cover page, as well as on the first page, its title is given as "*Memorial and Petition on Behalf of the Mississippi Choctaws*." This third memorial, like the other two, is also signed by "C. F. Winton, Counsel," and closes with the following words:

"With sentiments of the most distinguished consideration, I have the honor to remain, on behalf of the Mississippi Choctaws, Your Faithful and Obedient Servant." Ex. 1, R. L. O., p. 85.

This third memorial is, as the Court states in the second paragraph of finding twelve—"of the same purport" as the other two memorials—that is, all three memorials petition Congress for the relief of *the* Mississippi Choctaws.

These three memorials, like the resolution, set out in the fifteenth finding, and which the Court there states was drawn by Owen, were prepared for the purpose of presenting to Congress the matter of the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation. The first memorial was presented in December, 1896; the second, in January, 1897, and the said resolution was passed by the Senate on February 11, 1897, which shows conclusively that both memorials, as well as the resolution, were prepared and presented in behalf of *the* Mississippi Choctaws, and *not merely a number* of them, and this, notwithstanding the fact that the two memorials were signed by only a number of the Mississippi Choctaws, on the well-established principle of law that a few, or several, of a class can act for the entire class. Only in this way could "the Mississippi Choctaws" be represented.

The Treaty of 1830 was signed on behalf of the Choctaws by only *one hundred and seventy-three Choctaws*, and it will not be contended, and never has been contended, by any one in this case, that the action of the one hundred and seventy-three Choctaws negotiating said Treaty, did not bind *all* Choctaws. The Congress of the United States, as well as the representatives of the Government negotiating the Treaty, recognized these one hundred and seventy-three Choctaws as acting for and speaking for *all* Choctaws.

The supplemental treaty with the Choctaws, of September 28, 1830, 7 Stat., 340, bound all Choctaws, and was only signed by *nineteen Choctaws*, some of whom were not even parties to the Dancing Rabbit Creek Treaty made the day before, September 27, 1830; and it must be remembered that at the time the Treaty of September 27, 1830, and the supplemental treaty of September 28, 1830, was entered into by the Government of the United States, with these individual Choctaws, the Choctaw Nation or tribe had been abolished by the Legislature of Mississippi, as stated in finding four, and the law of Mississippi at that time made it a penal offense for any man to exercise the office of Chief, Mingo, etc., a law still in full force.

The first memorial was signed not only by "C. F. Winton, Counsel" for the Mississippi Choctaws, but was also signed by "*The Mississippi Choctaws.*"

The second memorial was not only signed by C. F. Winton, Counsel in behalf of the Mississippi Choctaws, but was also signed by *two hundred and forty-seven* Mississippi Choctaws "*acting each for himself and the members of his family.*" Ex. 1, R. L. O., pp. 60-1.

At page 2574 of the Record Mr. Owen testifies as follows:

"I was their attorney upon the authority of 1,000 in-

dividuals in the first case, and later on upon the authority of nearly 2,000 individuals."

It would therefore seem that if 173 individual Choctaws negotiating and signing the Treaty of September 27, 1830, and the 19 individual Choctaws negotiating and signing the supplemental Treaty of September 28, 1830, had sufficient authority to act for and bind *all* the Choctaws, which numbered many thousands, Owen and Winton had sufficient authority, when they represented practically all, and certainly a majority of the Mississippi Choctaws, to act for *all* the Mississippi Choctaws. The 247 Mississippi Choctaws signing the second memorial presented to Congress in January, 1897, signed not only for themselves, but also for their families, and, allowing five to a family this memorial alone represented more than a thousand Mississippi Choctaws.

That Owen and Winton were acting for *all* the Mississippi Choctaws is also evidenced by the fact that the circular letter sent out on July 1, 1898, and signed by C. F. Winton, was addressed—"To the Mississippi Choctaws," Ex. 1, R. L. O., p. 174, the same as was the notice of December 2, 1898, sent out by the Dawes Commission "To the Mississippi Choctaw Indians." Ex. 1, R. L. O., p. 176. Both of these circulars or notices referred to the same Act of Congress, that of June 28, 1898, and both were addressed to "To the Mississippi Choctaws."

The memorial or petition of the Mississippi Choctaws presented to the House on February 13, 1900, by Mr. Williams, was on behalf of *all* Choctaws, and was signed by "*The Mississippi Choctaws*, by C. F. Winton, Logan, DeMond and Harby, Attorneys for the Petitioners." Ex. 1, R. L. O., p. 180.

The "*Petition of the Mississippi Choctaws*" presented to

the Senate on April 4, 1900, by Senator Stewart was in behalf of *all* Mississippi Choctaws, and was signed by "*The Mississippi Choctaws*, Logan, DeMond and Harby, and C. F. Winton, Counsel." Ex. 1, R. L. O., p. 202.

The Report made by Mr. Little, of the House Committee on Indian Affairs, January 29, 1901, refers to the contention made in behalf of *the* Mississippi Choctaws. Ex. 1, R. L. O., p. 242. And it was Owen and Winton who made this contention for them.

The memorial of April 24, 1902, was likewise in behalf of *the* Mississippi Choctaws, and was signed by "*The Mississippi Choctaws*, by C. F. Winton, Robt. L. Owen, Counsel." Ex. 1, R. L. O., pp. 281-4.

On March 15, 1904, Mr. Stephens, of Texas, presented to the House a "Memorial of Mississippi Choctaw Indians," which was likewise signed by "*The Mississippi Choctaws*, by C. F. Winton, R. L. Owen, Counsel." Ex. 1, R. L. O., p. 341.

The original petition filed in this case was against *the* Mississippi Choctaws. In fact, from the very beginning of this "*long and somewhat furious contest*" in behalf of *the* Mississippi Choctaws, runs a thread showing that at every step of the proceedings Owen and Winton were acting for and representing *all* Mississippi Choctaws.

In the cases of the Eastern Cherokees and the Western Cherokees—40 Ct. Clms., 252, 148 U. S. 247—the Court recognized the principle of law that a few of a class could act for the class, and rendered judgment accordingly.

See pages 91-94 *post*.

FINDING 15.

Amend finding fifteen by adding thereto a paragraph as follows:

About this time the said Owen made an argument

before the Committee on Indian Affairs of the House of Representatives, when considering House Bill 10372, which resulted in a favorable report being made by said Committee on said Bill, which recognized the rights of the Mississippi Choctaws to citizenship in the Choctaw Nation, and which Report had been drawn and submitted by Mr. Owen. Ex. 1, R. L. O., 90. Said favorable Report is known as H. R. Rep. 3080, 54th Cong., 2d Sess. R. 292-3.

FINDING 16.

Amend finding sixteen by striking out the last paragraph, and insert in lieu thereof a paragraph as follows:

The above provision, 30 Stat., p. 83, was inserted in said Indian Appropriation Act, in the Senate, as the result of an effort made by Owen and Winton, to have enacted a provision more favorable to the Mississippi Choctaws. R. 293.

The facts stated in this paragraph of finding sixteen were no doubt taken from the Defendants' Motion to Amend the Tentative Findings, filed December 7, 1914, p. 310, Vol. 10, and R. 536 there cited in support of the Defendants' proposed amendment, and pp. 33 to 43 Defendants' Original Request for Findings of Fact do not establish the fact stated in said paragraph. The citation, p. 536, is to the deposition of Mr. Williams, where Mr. Williams testifies on this question as follows:

I introduced the bill containing that language, or language similar to it, or else introduced a resolution that became a part of the appropriation act. I have not the papers with me now, and I do not know just precisely how I did introduce that, though my recollection is that subsequently it was adopted in the manner in which it here appears. I think the language

which you read is not identically the language of my bill, but is as the Committee on Indian Affairs amended it. That is my recollection.

Mr. Williams is mistaken. Said provision was not inserted in the Act of June 7, 1897, while the bill was being considered in the House, but was inserted in the Senate. The proceedings in the Senate relative to the passage of the above provision as shown by the Congressional Record are as follows:

Mr. Walthall: I ask unanimous consent of the Senate to consider the amendment which I propose at this time, as I am obliged to leave the Chamber within the next thirty or forty minutes.

The Presiding Officer: The Senator from Mississippi asks unanimous consent that an amendment which he proposes may be now considered. Is there objection? The Chair hears none. The amendment will be stated.

The Secretary: In line 2, page 57, after the word "services," it is proposed to insert:

"That the said commission shall without delay enroll the Choctaws now resident in the State of Mississippi as citizens of the Choctaw Nation, and such Choctaws who possess at least one-eighth of Choctaw blood shall be enrolled on a special roll, and are entitled to all the rights of Choctaw citizenship, except in the annuity under the treaty of 1830, as therein provided."

Mr. Pettigrew: Mr. President, the amendment offered by the Senator from Mississippi peremptorily requires that these Indians in Mississippi shall be placed upon the rolls. I have not had an opportunity to examine this question, so as to know whether they are entitled to be placed on the rolls or not, and entitled to a share of the property of these tribes; but I am willing to trust the Commission, which have power

and authority to investigate the question as to whether they are Choctaws or not and entitled to a share of this property. I therefore offer an amendment which I send to the desk as a substitute for the one offered by the Senator from Mississippi.

The Presiding Officer: The amendment will be stated.

The Secretary read as follows:

"That the Commission appointed to negotiate with the five Civilized Tribes in the Indian Territory shall examine and report to Congress whether the Mississippi Choctaws, under their treaty, are not entitled to all the rights of Choctaw citizenship except an interest in the Choctaw annuities."

Mr. Pettigrew: I appeal to the Senator from Mississippi to accept that as a substitute for his amendment.

Mr. Walthall: I should prefer very much to have the amendment in the form in which I submitted it, but I shall not detain the Senate at this late hour in discussing the matter. I will accept the substitute proposed by the Senator from South Dakota.

The Presiding Officer: The question is on the amendment submitted by the Senator from South Dakota.

The amendment was agreed to.

Mr. Walthall then asked and obtained consent to spread upon the record the 14th Article of the Dancing Rabbit Creek Treaty of September 27, 1830, and also a communication from the Secretary of the Interior transmitting certain information bearing on the subject in response to a resolution of the Senate. Cong. Rec., February 26, 1897, p. 2337, Vol. 29, p. 3.

The communication from the Secretary of the Interior, spread upon the record at the instance of Senator Jones, was the Secretary's reply to the Resolution prepared by

Mr. Owen, as stated in Finding 15, and on which Resolution Mr. Owen made an argument in the Interior Department before the Secretary made his reply thereto.

House Bill 10372 drawn by Owen, and upon which he obtained a favorable report (House Report 3080), was as follows, to wit:

54TH CONGRESS
2D SESSION
H. R. 10372.

IN THE HOUSE OF REPRESENTATIVES.

February 27, 1897.

Mr. Allen, of Mississippi, introduced the following bill; which was referred to the Committee on Indian Affairs and ordered to be printed.

A BILL

Providing for the enrollment of the Mississippi Choctaws, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the United States Commission to the Five Civilized Indian Tribes shall, without delay, enroll the Choctaws now resident in the State of Mississippi as citizens of the Choctaw Nation: Provided, That such Choctaws shall possess at least one-eighth of Choctaw blood, and be enrolled on a special roll and entitled to all the rights of Choctaw citizenship, except in the annuity under the treaty of eighteen hundred and thirty, as therein provided.

And it is perfectly obvious that Senator Walthall had introduced in the Senate the substance of the very bill drawn by Owen, and upon which he had received this favorable report, as a proposed amendment to the Indian

Appropriation Bill, and that his action resulted immediately in the compromise with Mr. Pettigrew which resulted in the Dawes Commission being instructed to make their famous report upon the rights of the Mississippi Choctaws.

From the above it must be, or should be, conceded that the resolution, which the Court states in finding fifteen was drawn by Owen, and the bill H. R. 10372, 54th Cong., Second Session, and Owen's activities were the cause of or resulted in the passage of the above amendment providing for an examination and report to Congress as to the status of the Mississippi Choctaws and their rights to Choctaw citizenship, because, as a reason for and an argument in favor of the adoption of the amendment, Mr. Walthall asked and obtained consent to spread upon the record a communication from the Secretary of the Interior, transmitting certain information bearing on the subject, and which was called for and furnished as a result of the resolution which Owen prepared.

An examination of pages 33-43, Defendants' Original Brief, discussing the Act of June 7, 1897, will show that he, on page 36, simply sets out said provision, and on page 39 Counsel for the Defendants states that Mr. Williams, when asked the direct question, answered that he was responsible for the item in the Appropriation Act of June 7, 1897, calling upon the Dawes Commission for a report upon the rights of the Mississippi Choctaws, and then quotes that part of Mr. Williams' evidence on this question, hereinbefore set out. Notwithstanding the fact that Counsel for the Defendants has repeatedly referred to the statement that Senator Williams prepared said provision, and notwithstanding the fact that Senator Williams testified that he *"introduced the bill containing that language, or language similar to it, or else introduced a resolution that became a part of the appropriation act,"* an examination of

the Congressional Record for the days on which the Act of June 7, 1897, was considered in the House, fails to show any bill or resolution introduced by Mr. Williams relating to the Mississippi Choctaws, or any remarks whatever made by Mr. Williams relating to the Mississippi Choctaws either during the 54th Congress or the 55th Congress, the index of the Congressional Record showing no remarks, no votes, no amendments or bills offered relating to the Mississippi Choctaws by Mr. Williams,—that is, from the year 1896 down to March, 1899, while the index shows the activities of Senator Walthall from Mississippi and Congressman Allen from Mississippi and Senator Jones and Mr. Little and Senator Platt and Mr. Curtis, a chronological abstract of which for the 54th and 55th Congresses, taken from the index of the Congressional Record, is here submitted, and is as follows:

CHRONOLOGICAL ABSTRACT
OF
MEMORIALS, BILLS, AMENDMENTS, AND
ACTS OF CONGRESS RELATING TO
THE MISSISSIPPI CHOCTAWS.

54TH CONGRESS, 2D SESSION, December, 1896—March, 1897. Walthall Resolution of February 11, 1897, in the Senate calling on the Secretary for certain information with respect to the Mississippi Choctaws. For copy of Resolution see Senate Document 129.

Senate Document 129, February 16, 1897—Letter from Secretary of the Interior in response to the Walthall Resolution.

H. R. 10372, by Allen, of Mississippi, a Bill providing for the enrollment of Mississippi Choctaws.

H. R. 3080, on the above bill. No further action thereon.

55TH CONGRESS, 1ST SESSION, March, 1897, to July, 1897.

H. R. 1861 by Allen, of Mississippi, providing the enrollment of Mississippi Choctaws. No action.

2D SESSION, December, 1897, to July, 1898.

H. Doc. 274, February 3, 1898, Letter of Secretary of the Interior transmitting Report of the Commission to the Five Civilized Tribes relative to Mississippi Choctaws in response to the following provision contained in the Indian Appropriation Act of June 7, 1897: "That the Commission appointed to negotiate with the Five Civilized Tribes in the Indian Territory shall examine and report to Congress whether the Mississippi Choctaws under their treaties are not entitled to all the rights of Choctaw citizenship, except an interest in the Choctaw annuities."

H. R. 8581,—For the protection of the citizens of Indian Territory and for other purposes, by Mr. Curtis, of Kansas.

H. R. 593, March 1, 1898, on the above.

S. 3544, by Senator Jones, of Arkansas,—A Bill to provide for the submission to the Court of Claims the claim of the Mississippi Choctaws for the determination of their rights. Passed the Senate.

H. Rep. 1118, April 20, 1898, on the above bill. No further action.

H. R. 7702, by Mr. Little, same as S. 3544 above. No action.

Public No. 162—An Act for the protection of the people of Indian Territory, etc., approved June 28, 1898.

3D SESSION, December 1898, to March 3, 1899.

S. 5340, by Senator Platt—To adjudicate the claims of the Mississippi Choctaws.

S. 5350, by Senator Jones, of Arkansas—To adjudicate the claims of the Mississippi Choctaws.

The other pages—41, 42 and 43—cited by the Defendants' Counsel contain nothing whatever relative to the passage of the provision in question.

FINDING 17.

Amend finding seventeen, paragraph one, line two, by striking out the words "of some."

This paragraph, with the exception of the words "of some," to which objection is here made, is *verbatim* with the first paragraph of the seventeenth finding made by the Court on December 7, 1914. No objection was made, nor amendment offered to this paragraph by the Defendants in either their Motion to Amend, filed on January 28, 1915, or in their Reply to Plaintiffs' Motion to Amend.

The provision of the Act of June 7, 1897, following upon the direction of which Mr. Owen appeared before the Dawes Commission, had reference to "*The Mississippi Choctaws*," and not to some of them. The appearance of Mr. Owen before the Dawes Commission was when that Commission was considering said provision of the Act of June 7, 1897, and, inasmuch as that provision pertained to *the Mississippi Choctaws*, Mr. Owen's argument before the Dawes Commission must necessarily have been in the interest of *the Mississippi Choctaws*, and not only in the interests of some of them. Furthermore, not one word of evidence can be found in the record of this case to warrant, in the findings of fact, the insertion of these words "of some" in this paragraph.

MR. McKENNON, testifying as to Mr. Owen's appearance before the Dawes Commission, says:

"I can't say that he (Owen) appeared as to any particular individual. I know that he appeared before us and I had considerable conversation with him and he furnished me some documents." (R. p. 512.)

Certainly Mr. Owen did not appear in behalf of any particular individual, but appeared in behalf of all the Mississippi Choctaws. Even the case of Jack Amos was a test

case and in that way was in the interest of every Mississippi Choctaw, and when appearing in that case Mr. Owen not only appeared for Jack Amos and ninety-seven others—parties to that suit and their families—but in the interest of and for every Mississippi Choctaw interested in and affected by that decision.

Testifying on this question, Mr. Owen says, in 1909, that:

"It was generally understood that I was the attorney of the Mississippi Choctaws, and I regarded myself so because I had represented them continuously for six years prior to this time." R. 2573.

SENATOR JAMES K. JONES, Chairman of the Indian Committee of U. S. Senate, testified to the work done by Mr. Owen in behalf of *the* Mississippi Choctaws. R. 317, 413-15.

Senator Jones said:

"I was on the Committee of Indian Affairs during my entire service in the Senate, and I know the constant work done by you (Owen) in behalf of the Mississippi Choctaws; but for your untiring efforts in their behalf, they would never have had any recognition. If my personal knowledge of your efforts on this line will at any time be of use, please let me know and I can state the facts in a way that will satisfy anybody."

VICE-PRESIDENT SHERMAN, Chairman of the Committee on Indian Affairs of the House from December, 1895, to March 4, 1909, during this "long and somewhat furious contest," referring to the services rendered by Mr. Owen in behalf of *the* Mississippi Choctaws, says that:

"I am well aware that for years your services have been assiduous and constant for these people and that you have presented their case before the Indian Committee time and again with a clearness and a force which clearly demonstrated that you had mastered the subject, and to master that subject meant the expenditure of almost limitless time." R. 317.

CONGRESSMAN LITTLE, with reference to Mr. Owen's connection with legislation in the interests of "The Mississippi Choctaws," says that Mr. Owen had

"been persistent in pressing legislation for their enrollment," and "on various occasions presented strong and forcible arguments in their behalf, and have also appeared before the Committees having this subject in charge in their interest; that your services in connection with this legislation have been faithful and efficient. I make this statement in justice to you." R. 318.

MR. STEPHENS, for many years a member of the Indian Committee of the House, and the present Chairman of the Indian Committee, speaking of Mr. Owen's services in behalf of the Mississippi Choctaws, says that Mr. Owen

"has been untiring in his efforts to secure the recognition of the Mississippi Choctaws and to secure their proper enrollment. His continued attention to this matter has, in my judgment, been of *great value* to the Mississippi Choctaws, as he has been unceasing in his efforts to secure their recognition." R. 318. (*Italics mine.* W. W. S.)

MR. STEPHENS is still a member of the House, and when in 1909 he was examined as a witness in behalf of the estate of Chester Howe, he testified that Owen often appeared before the Committee on Indian Affairs of the

House and the sub-committee having charge of legislation pertaining to the five Civilized Tribes in behalf of the Mississippi Choctaws. R. 116, MMS. pp. 6-7.

SENATOR MONEY, of Mississippi, said in 1903, speaking of Mr. Owen, that he

"was very active and influential for several years in securing favorable legislation for the Choctaw Indians. He prepared arguments and made many useful suggestions to help to shape the legislation and was persistent in advocating the rights of the Indians. I know this of my own knowledge and it gives me pleasure to say so." R. 318.

SENATOR CURTIS says that he knows that Mr. Owen "appeared before the Committee on Indian Affairs several times each Congress in regard to the Mississippi Choctaws, and that it was generally understood that you were their attorney." R. 319, 410-11. (Italics mine. W. W. S.)

See also pages 80-84 *supra*.

FINDING 18.

Amend finding eighteen by striking therefrom the last paragraph, for the reason that the evidence does not establish the facts therein stated.

This paragraph of finding eighteen is almost identical with the amendment offered by the Defendants to tentative finding eighteen, R. Vol. 10, p. 233, and in support of said paragraph Defendants there cite the record pages 499-501, 536-539. An examination of these pages of the record shows that the Defendants rely upon the testimony of Mr. McKennon and Mr. Williams. The testimony of Mr. McKennon is that he *thought* that Mr. Williams prepared said provision. R. 499. The pages 536-539 are to the

deposition of Mr. Williams, but he only speaks of this provision on page 539, where he says that:

"My attention was called to the language immediately preceding the proviso, to wit: * * * I do not remember whether my attention was called to this by Captain McKeunon, or by reading the bill as it first appeared from the Committee. I think both. * * * I submitted it to Mr. Curtis, who was in charge of the bill and it became a part of the Act. I think it was offered by Mr. Curtis as a Committee Amendment, but I drew it up."

MR. OWEN, testifying about the passage of this provision, says:

"This provision (referring to the sentence immediately preceding the proviso) was ruinous to the full-blood Mississippi Choctaws because they had not previously removed, and they would have been definitely barred by this act of Congress if it had become a law. I therefore personally prepared the language which immediately follows: to wit:

"Provided, however, that nothing contained in this act shall be so construed as to militate against any rights or privileges which the Mississippi Choctaws may have, under the laws of or treaties with the United States."

"I made a number of carbon copies of this item. I appealed to John Sharp Williams to assist me in this matter, called on him in the House, got him to go over to the Senate side to see the Senators of Mississippi and ask their assistance." R. 2505. See also 2515—16 Q. 22.

Testifying further Mr. Owen tells in detail that he drew this provision and gave it to Mr. Williams. He says: "I personally drew it and put it in his hands in the hall lead-

ing from the House of Representatives to Statuary Hall. I remember it very well because the Curtis Act, as drawn, excited me, since the language would have inevitably defeated my clients, the Mississippi Choctaws, of any recovery, and I was greatly disturbed about it." R. 2561.

It will be noted that Mr. Williams qualifies his statement by saying that the provision was prepared by him and at the request of no other human being

"that I remember,"

while Mr. Owen, as above set out, testifies emphatically and definitely that he prepared the provision and presented it to Mr. Williams.

If said paragraph should stand, however, and not be stricken from the findings, it should be changed or amended so as to read as follows:

The foregoing proviso was advocated by Mr. Owen and Mr. Williams presented it to Mr. Curtis then in charge of the Bill, who offered it as an amendment to the same, and it became a law.

The provision as changed above practically states the facts as testified to by both Mr. Williams and Mr. Owen, considering the fact that Mr. Williams testifies only as he remembers the facts, while Mr. Owen testified very emphatically that he prepared and handed the provision to Mr. Williams. We omit the controverted point as to who prepared it.

FINDING 10.

Amend finding nineteen, paragraph 2, line 4, by striking therefrom the words "notified all," and insert in lieu thereof, the words:

notifying the

This circular letter or notice sent out by the Dawes Commission was addressed "To The Mississippi Choctaw Indians." The notice of July 1, 1898, which Winton sent out was addressed "To the Mississippi Choctaws." It would therefore seem that both notices were practically the same as to whom they were addressed. Ex. 1, R. L. O., pp. 174, 176.

In this connection the Court's attention is invited to the fact that, no one has testified, in behalf of the Defendants or anyone else, that the Dawes Commission notified *all* the Choctaws. The paragraph with the amendment correctly states just exactly what was done as to notifying, or rather, as to the effort made by the Dawes Commission to notify the Choctaws of the Commission's proposed meetings in Mississippi.

FINDING 20.

Amend finding twenty, paragraph 1, by striking from the last sentence thereof the following words:

never approved by the Secretary and was withdrawn by the Commission, December 20, 1900, a duplicate copy of which having been retained in the Indian Office and the same was,

so that said sentence, after amendment, will read as follows:

Said schedule was formally disapproved by the Secretary March 3, 1907.

This sentence of finding twenty contains an error of fact when it states that the Commission withdrew the schedule of March 10, 1899. The fact as shown by the record is that the Commission, instead of withdrawing said schedule, *attempted to withdraw it*, on December 28, 1900, R. 2870,

and the Secretary of the Interior, on January 9, 1901, R. 2872, and again on February 7, 1901, R. 2878, refused to permit the Dawes Commission to withdraw said schedule, and instructed said Commission to make no changes in said schedule of March 10, 1899.

It will also be noted that in finding twenty-six, p. 12, reference is made in the last paragraph, fourth line, to the fact that the Dawes Commission had requested permission to withdraw this schedule, but no reference is made to how the request was acted upon, inferring, however, that the request was not granted, which the record undoubtedly shows to be the fact.

Further amend finding twenty by striking therefrom paragraphs 2, 3, 4 and 5, being all of said findings on page 10, for the reason that the facts therein stated are not established by the evidence, and insert in lieu thereof, two paragraphs as follows:

After the circular of July 1, 1898, set out in finding nineteen, was sent to the Mississippi Choctaws, Winton and associates co-operated with the Dawes Commission in obtaining a rapid identification of the Mississippi Choctaws by Winton going personally into the various counties where the Mississippi Choctaws lived and sending runners throughout the country urging the Mississippi Choctaws to appear before the Dawes Commission for identification. Rec. 294, 309, 311. Ex. 3, R. L. O., Dep. Rec. 522-4, Finding 43, p. 29, paragraph 2.

Plaintiff Owen prepared at considerable expense and furnished the Dawes Commission with an alphabetical index containing the names of sixteen thousand Choctaws which Commissioner McKennon testified was of great value to the Commission in identifying the Mississippi Choctaws. A duplicate copy of this alphabetical index has been by Owen filed in this case. Ex. 2, R. L. O. Dep. Rec. 294, 402.

The first paragraph on page 10, with two exceptions, is the same as found by the Court on this question in the tentative findings filed December 7, 1914. Motion was made to strike this same paragraph from said tentative findings, and in the reply brief filed by the Defendants, objection was made to the Plaintiff's Motion, and citation was there made to pages 503-6, 521-526 of the record as containing positive and affirmative evidence establishing the facts stated in said paragraph. R. 331, Vol. 10. Examining pages 503-6 we find the evidence on this question to be as follows:

On page 503 the only reference to this subject by the witness McKennon is that he identifies the Dawes Commission Report of March 10, 1899. Q. 77.

On page 504 the witness, McKennon, simply testifies that he had a conference with Winton while in Mississippi, in which he, McKennon, protested against him, Winton, taking contracts with the Indians. Q. 86-90.

On page 505 the witness, McKennon, testifies that he complained to Winton that Winton's work was confusing the Indians and troubling them and interfering with the work of the Commission, and that there was a stenographic report of the conversation between himself and Winton, Q. 91. This stenographic report will be found printed at pages 522-524 of the record. That conference as reported is as follows:

Commissioner McKennon: Mr. Winton, I find that your work here is greatly confusing these Indians and troubling them and interfering with the work of the Commission.

Mr. Winton: I don't know why it should.

Commissioner McKennon: They understand that you are working for the Government.

Mr. Winton: They should not understand that because there has been no such representation made to them.

Commissioner McKennon: They are confused and troubled about you, and many of them are not decided what to do; they do not understand it, and for that they do not know whether to come before the Commission or not. They understand that you will get part of what they get.

Mr. Winton: They do not understand that.

Commissioner McKennon: They say so.

Mr. Winton: It is because those Indians stand around there. Zeb Smith is one of them.

Commissioner McKennon: They tell me that they are confused by your work.

Mr. Winton: The facts do not bear it out, because the people I have dealt with were the first ones to go in before you. I understand that the people and merchants here would like to see them make their proof, because they are indebted to them and they want to get their claims through.

Commissioner McKennon: They do not understand these papers they sign; they tell me they do not understand.

Mr. Winton: I think they do understand, because the papers were read to them by the parties they are acquainted with; they understand them.

Commissioner McKennon: There are complaints against Mr. Welsh.

Mr. Winton: Mr. Welsh was recommended to me as one of the straightest men in the country.

Commissioner McKennon: That may be true; I tell you what the Indians say of him.

Mr. Winton: That is brought about by talebearers who want to make trouble.

Commissioner McKennon: They are men with whom you have contracts.

Mr. Winton: Some of them may be.

Commissioner McKennon: And men with whom you have secured contracts since you came here?

Mr. Winton: I have not directly secured any contracts.

Commissioner McKennon: You and Welch together.

Mr. Winton: I think Mr. Welch got some. He is a brother of the other (Welch), and he got ten to come here where you would not have got one.

Commissioner McKennon: It is because of these contracts; that is why they are shy of coming in.

Mr. Winton: They have been informed that we had nothing to do with your court. Everything has been fair and square. My connection is with the very best of people here.

Commissioner McKennon: They are not coming because of these contracts.

Mr. Winton: They would not come anyway. I know that that is not the reason. They think they are to be forced over there.

Commissioner McKennon: I am presenting to you now my information of the conditions, and I want to protest against any action that will interfere with the business of the Government, of which I have charge.

Mr. Winton: I don't know why you want to do that, because I am not interfering. If anyone asks me, I will and do tell him to go in and see you.

Commissioner McKennon: I am acting upon my information from the Indians, for I have not talked with anybody else about it.

Mr. Winton: I do not think it is fair for you to make this protest when I am not interfering.

Commissioner McKennon: I am simply presenting to you, instead of going somewhere else, just the information that I will give to the Government.

Mr. Winton: Yes, sir, I will make a report, too, for I have reputable people here that will stand by the truth. I come here because I promised them I would be here. I am not making any contracts with them today, or influencing them in any way.

Commissioner McKennon: I felt it my duty to inform you of the conditions as I understand it from the Indians.

Mr. Winton: But you are making a protest on what some Indian has told you.

Commissioner McKennon: I said some Indians.

Mr. Winton: That sort of thing is easy to work up.
Commissioner McKennon: Yes, sir; I know that they can be worked up.

Mr. Winton: You seem to make an official act out of something that does not deserve it.

Commissioner McKennon: These Indians don't understand; they understand now that if they go before the Commission that you will get half of what they get, and they feel like they ought to be protected against that. That is what I want to say. Simply wanted to inform you.

Mr. Winton: Will you give me the names of those Indians?

Commissioner McKennon: I don't know them. I will take their statements and their names will appear of record.

Mr. Winton: Then their names will appear of record and I will get a chance. I have made no false representations and have simply explained to them what I understand to be the situation, and was working to give them the best services I could. I was working in good faith and not working any swindle.

Commissioner McKennon: Your contracts are for one-half what they get.

Mr. Winton: I admit that. When I started in I thought that would be fair. There has been a great deal of expense.

Commissioner McKennon: I have found nothing that you or anyone else has done that has contributed to the present course of the Government in dealing with this matter.

Mr. Winton: I do not care to discuss that any further. I work in connection with other men who are well informed, and I believe yet they will; but I may be mistaken.

It will be noted that Mr. Winton in this conference told the witness McKennon that "The people I have dealt with were the first ones to go in before you," and further states

that a Mr. Welch who was working for Winton got ten Indians to come before the Commission, where McKennon could not have gotten one, and that Mr. Winton specifically and emphatically denied interfering with the business of the Government, then in charge of Mr. McKennon.

Page 506 is devoted to certain *ex parte* statements taken from Indians relative to the making of contracts with Winton and an objection entered by the Attorney for the Plaintiffs to the admissibility and competency of said *ex parte* statements as evidence.

Pages 521-526 cited by the Defendants contain these *ex parte* statements and the conference which McKennon had with Winton, hereinbefore set out. Witnesses other than Mr. McKennon have testified on this question and their testimony relative thereto, but not cited by the attorney for the defendants, is as follows:

W. L. HART, a witness examined in behalf of the interveners, in answer to question 22 as to what Mr. Winton was doing in Mississippi in 1899, testified that he, Winton, was getting them (Mississippi Choctaws) before the Dawes Commission; getting them enrolled and making contracts with them. R. 190, Q. 22-23.

MR. OWEN, testifying in 1907, said:

"Winton thereupon went into Mississippi and assisted the Mississippi Choctaws in every way in his power to secure their enrollment," R. 294, and that

"Winton's services in Mississippi, among other things, consisted in persuading the Mississippi Choctaws to appear before the Dawes Commission, many of them being opposed to appearing because they were grossly misled by the planters in Mississippi, * * * and they were induced to believe in many cases that the officials of the United States were there, not for their good, but for the purpose of getting their names so as to enlist them in the war with Spain.

* * * More than that they were told by people in Mississippi that Indian Territory was very unhealthy, that people sickened and died in Indian Territory, and they were further informed that Indian Territory was a place of great violence, where the lives of men were not safe." R. 309. See also Beall's Dep. R. 447, Q. 16.

MR. MURCHISON, relative to his and Winton's services in Mississippi in 1909, stated that:

We would send out—I remember on one occasion talking in Leake County with Mr. Neale, and Mr. Neale and I went out one day up into an Indian settlement about 5 or 6 miles from Carthage, and went up and had a talk with a lot of Indians who hadn't been down, to get them to come down. There was a large settlement near Philadelphia, Miss., known as the Boguechitto settlement of Indians there, and we would send them people who were employed by us, and in whom they had confidence, to explain this matter to them and meet them, and get them to come down and come before the Commission, and especially to those who had made contracts with them. Of course we realized that we could do nothing for these Indians unless they appeared before the Commission and were identified. R. 341.

Our chief anxiety was to secure the appearance of the Indians before the Commission for identification, and to assist them in that identification in every way possible. R. 342.

CAPTAIN McKENNON testified as follows:

"My recollection is that his work among them made them backward about appearing before the Commission for the work I was doing."

And in answer to the question as to why they were backward, the Captain answered:

"I do not know, unless it was because they thought he was connected with the Commission in some way and they were being taken advantage of." R. 405, Q. 23, 24.

Captain McKennon in this answer corroborates what Mr. Owen testified to in 1907, hereinbefore set out—that the Indians were induced to believe that the Commission was getting their names so as to enlist them in the war with Spain.

CAPTAIN McKENNON was also examined as to what knowledge he had of the work done by Winton and associates in behalf of the Mississippi Choctaws prior to and at the time he wrote the Report, an extract of which is set out in paragraph 4 of finding twenty, and said that *he did not know at that time* that Winton and associates had been working for and in behalf of the Mississippi Choctaws—that is, that he did not know then that Winton had sent runners throughout the country at his own expense in an effort to cause the Mississippi Choctaws to come before the Commission for identification. R. 406. Q. 1, 2, 3.

Testifying further, Captain McKennon said that he met Mr. Winton in Mississippi as a stranger and that he merely saw in him a man making contracts with the Indians, and that he did not know then that Winton had been in their service for three years prior thereto, and did not know that Winton had presented the Mississippi Choctaw matter directly or indirectly before the Supreme Court, the Congress, and the Departments of the United States. R. 408, Q. 10, 11, 12, 13.

CAPTAIN McKENNON also testified that he does not remember that the Indians informed him that Mr. Winton had told them that he (Winton) was working for the Government. R. 409, Q. 4.

CAPTAIN McKENNON was again examined as a wit-

ness in behalf of the Defendants, and inasmuch as he is the author of the third paragraph of this finding, which is taken from the Dawes Commission Report of March 10, 1899, the Court's attention is invited to his answer to Question 115, R. 507, where he, with reference to that paragraph, says:

"At that time we understood that the matter of their rights would probably be submitted to the Court of Claims, and I understood that this roll was made with a view of using it in a suit before the Court of Claims for the determination of their rights, and thought that was all that there was to be done then, and knew that it was my duty to object. I also thought it was unfair to the Indians. Then again it created confusion, and I thought interfered with the work of the Commission."

DAVID W. W. YANCEY was one of the clerks with Captain McKennon in Mississippi in 1899, and on this question testified as follows:

"Mr. Richardson: Do you think, Mr. Yancey, that Mr. Winton was there to aid the Commission?"

"The Witness: He told me—we usually stopped at the same hotel—that he was representing some of the people and furthering their enrollment."

"14. Question. That was independent of your work?"

"Answer. He didn't say. He said he was trying to gain their recognition."

"1. Cross-interrogatory. You didn't encounter any opposition from Mr. Winton?"

"Answer. No, sir; he told me he was trying to get the people to come in. Captain McKennon had that opinion, but I never thought so, except as I told you a while ago that he confused us in our work." R. 457.

MR. YANCEY was a witness called in behalf of the Defendants, and he also testified that during the three weeks that Captain McKennon was in Mississippi they identified 1,923 Mississippi Choctaws and rejected probably that many more. R. 457.

P. G. REUTER was another clerk with Captain McKennon on his trip to Mississippi in 1899, and testifying as a witness in behalf of the Defendants, said:

"I know only a conversation I had with a number of the claimants (meaning the Indians) that they were informed that he could be an assistance to them in securing their allotments." R. 495-4.

and that he, Reuter, regarded Winton's presenting the claimant Indians to the Commission, whom the Commission found were not entitled to identification, was a hindrance to their work. R. 495-5.

Testifying further the witness Reuter said that he never knew of the enrollment of Indians *without the aid of counsel*. R. 495-6.

The above is practically all of the evidence relative to the facts set out in the second paragraph at the top of page 10, and the last answer of Captain McKennon, together with the extract, *if it be competent evidence*, from the Report of the Dawes Commission of March 10, 1899, set out in the fourth paragraph of finding twenty is all of the evidence upon which to base the facts stated in paragraph 2. If the facts are to be based upon the preponderance of the competent evidence in the record, then the facts stated in paragraph 2 should not be found by the Court, for the reason that the bulk of the competent evidence does not establish such facts, but, on the contrary, establishes the facts stated in the paragraph hereinbefore asked to be found in lieu of said second paragraph.

Paragraphs 3 and 4 to which objection is here made, contain nothing more nor less than *an expression of an opinion* had by Captain McKennon at the time he wrote the Dawes Commission report. Captain McKennon has been examined twice as a witness in behalf of the Defendants since writing that report; he has been examined and cross-examined, and such examination shows that at the time he wrote that report he was not informed as to everything Winton was doing and had done in behalf of the Mississippi Choctaws in his effort to cause them to come before the Dawes Commission for identification. In short, all of the information or knowledge on this subject Captain McKennon had at that time was that he knew that Winton, a stranger to him, was making contracts with the Mississippi Choctaws and he did not think he should do so.

During the examination of Captain McKennon, Counsel for Defendants introduced and offered in evidence the stenographic report of the conference which McKennon had with Winton at that time, 1899, and in that conference Winton *emphatically denies* that he is or was interfering with the work of identifying the Indians, and *affirmatively declares* that he and his associates were laboring to cause the Mississippi Choctaws to come before the Commission, and that their efforts in that direction had been more successful than the efforts made by the Commission, and further stated that the Indians whom he and his associates had seen, were the first Indians to come before the Commission for identification.

Considering the statements made by both McKennon and Winton, the Court has before it on this question only the opinion of McKennon as put in the report of March 10, 1899, while it has emphatic, positive statements from Winton to the contrary, and Winton's statements are not the

expression of his opinion, but emphatic, positive statements of fact.

Winton's statement is supported by the masterful, overpowering, circumstantial evidence, confessedly a fact, that McKennon actually passed upon and enrolled 1,923 Mississippi Choctaws and passed upon and rejected as many more within three weeks, showing positively that he was not retarded in passing on these cases, but assisted in a masterful manner by Owen and Winton.

Another objection to setting out in the Findings of Fact said extracts from the Dawes Commission Report of March 10, 1899, is that in that extract Captain McKennon gives it as his then opinion that persons securing contracts with the Indians could do nothing toward securing them benefits accruing under the Treaty of 1830, and he further expresses the opinion that the Hon. John Sharp Williams and the late Senator Walthall secured the legislation under which the Commission was then acting, and that their Congressmen may safely be trusted to further look after their interests. These opinions are shown to be thoroughly unsound by this record and within a year McKennon was the head of the firm of McKennon, Mansfield, McMurray & Cornish fighting the poor Mississippi Choctaws, and ultimately overthrowing this very McKennon report of March 10, 1899.

Are such statements of McKennon statements of fact, or expressions of opinion?

This witness has been examined and under oath has said that he at that time knew nothing about any effort made by Winton, Owen and associates in an effort to secure the legislation under which the Commission was then acting, and in fact did not know that Winton and associates had been working in behalf of the Mississippi Choctaws for three years prior thereto. Had he had such knowledge, his

opinion might have then been otherwise than as stated in the paragraph set out in this finding. Findings of Fact, however, should be based upon facts and not upon opinions as to what persons could not do and what Congressmen could do.

Captain McKennon, in this extract from the Dawes Commission Report of March 10, 1899, says that "their Congressmen may safely be trusted to further look after their interests."

Without casting any reflection upon the ability of their Congressmen to look after the rights of the Mississippi Choctaws, the Court's attention is respectfully invited to the fact that the interests of the Mississippi Choctaws were not looked after by any Congressmen from 1830 until 1896 — *a period of sixty-six years* — until Owen and Winton became interested in their behalf. It is safe to say that had not Winton and Owen become interested in behalf of the Mississippi Choctaws, they would to this day be living in poverty in the State of Mississippi. That this last statement is true is admitted by Senator Williams when being examined as a witness in behalf of the Defendants in 1909, after all the legislation in question had been enacted, and when he was speaking with a knowledge of all that had been done by everyone, including their Congressmen, in behalf of the Mississippi Choctaws, and that evidence is that Owen was the first man to present the question of the rights of the Mississippi Choctaws to citizenship in the Choctaw Nation to him, and that at first blush he did not think there was much to it, and requested Owen to prepare him a brief on that question, which Owen did, and in that way *Williams was convinced* that the Mississippi Choctaws did have rights to citizenship in the Choctaw Nation under the Treaty of 1830. R. 548. The Court will remember that Mr. Williams, asking the Indian Office as to the rights of the

Mississippi Choctaws, was left under the impression they had none. R. 2939, 2948-9-a.

Speaking further and in a letter written on April 12, 1909, to W. W. Wright, an attorney not for Winton, but for the interveners Howe, Vernon and Bounds, Mr. Williams says:

"The only man I remember making suggestions to me—and, he was the man who originally brought the question of the rights of the Mississippi Choctaws to my mind—was Robert L. Owen, now a Senator from Oklahoma. * * * If it had not been for Owen I probably never would have set about it, because my attention might not have been called to the situation." Rec. 552-3.

If it is proper to include in finding twenty an extract from the Dawes Commission Report of March 10, 1899, because said extract is taken from an official report made at the time of the occurrence, then it is respectfully submitted that there should be added to that finding a paragraph based upon the stenographic report of the conference that McKennon had with Winton *at that time*, stating that Winton emphatically stated that he was not interfering with the work of identifying the Indians, but, on the other hand, was doing all he could, and was, as a matter of fact, aiding, assisting in, and expediting the work of identifying the Mississippi Choctaws. One is as competent as the other on which to base a finding of fact, and if there is any difference, Winton's emphatic statements of fact should be given more weight by the Court when considering the question as to what Winton was doing in Mississippi, than the mere expressions of opinion on the part of McKennon.

Another matter to which the Court's attention is invited in this connection is that the third and fourth lines of said

second paragraph of finding twenty, top of page 10, contain a statement of fact *not even referred to* by any of the witnesses testifying in this case, and certainly not mentioned by the witnesses whose testimony appears on the pages of the record cited by the Defendants in support of such statement. That statement of fact alleges that Winton

"endeavored to prevent the Indians from appearing for identification until after Winton had first secured contracts with them."

That statement of fact is requested to be found by the Defendants in the second paragraph of the eighth request, p. 10, of Defendants' original brief, and in support of it Counsel for Defendants cites pages 404, 405, 453, 495-3d, 507, 508, 521, 527, and nowhere on either of the nine pages of the record cited by Defendants in support of that paragraph of his request for findings of fact is it shown that Winton "endeavored to prevent the Indians from appearing for identification until after he had first secured contracts with them."

This sentence to which objection is made *verbatim* with the latter part of the second paragraph of the Defendants' eighth request, and if it is not established by the evidence set out on the nine pages cited by the Defendants, it is certainly safe to say that the record does not establish said fact.

SECOND PARAGRAPH OF PROPOSED AMENDMENT TO FINDING 20.

In support of the second paragraph which the Plaintiffs request the Court to find as a part of finding twenty, the Court's attention is invited to the fact that *it is an undisputed fact* that Mr. Owen prepared an alphabetical index

containing the names of 16,000 Choctaws, and furnished a copy thereof to the Dawes Commission. A copy of that index has been filed with the deposition of Mr. Owen, and marked Exhibit No. 3. On this question Mr. Owen testified as follows:

"This list contained about 16,000 Choctaw names. I also furnished to the Dawes Commission, for the purpose of enabling them to perform their duty, a similar list." R. 294.

CAPTAIN McKENNON corroborates Mr. Owen as follows:

"Q. Do you remember Mr. Owen furnishing you with an alphabetical index of the Choctaw Indians and with two bound volumes of the record of the Choctaw Nation v. The United States, with a view to assisting you to make up the schedule of Mississippi Choctaws?"

"A. I remember Mr. Owen furnishing me the index to which you refer and other documents—I can't remember so much about the other documents—for the purpose you mention; and I will add that they greatly aided me in that work." R. 402.

The alphabetical index referred to gave the names of all Choctaws, and by the letters and symbols placed before the names of certain Choctaws indicated that they were Fourteenth Article claimants and where the family record could be found in over two thousand pages of records. This alphabetical index was not one made up from the records of the U. S. and the Choctaw Nation, and was printed by the Robert D. Patterson Stationery Company, St. Louis.

Referring to this index of Choctaw names, counsel for the Defendants, R. p. 330, Vol. 10, states that Mr. Owen does not say when he furnished a copy of this index to

in identifying the Mississippi Choctaws, and the witness McKennon, examined in behalf of the Defendants, has testified that it "*greatly aided me in that work*," R. 402, and thereby expedited the work of identification.

The facts set out in the second paragraph hereinbefore requested to be found as a part of finding twenty, being established not only by the testimony of Owen, but by the testimony of the witness McKennon, introduced in behalf of the Defendants, it is respectfully asked and insisted that such facts should be found by the Court.

Paragraph Five, Finding 20.

As to the *fifth* paragraph of the *twentieth* finding, objection is made to it for the reason that it explains a statement made in the extract from the report of the Dawes Commission of March 10, 1899, and connects up Winton with Arnold and Turner. If Plaintiffs' contention is sound and good, that it is error to set out in finding twenty the extract giving Captain McKennon's *opinions*, it is also error to explain to whom reference was made in that extract giving the *opinion* of Captain McKennon. Another reason is that the Plaintiffs are not responsible for Arnold intervening in this case, and the Plaintiffs' case or the findings of fact pertaining alone to the Plaintiffs, should not be encumbered with facts pertaining to the interveners, and for that reason alone the said fifth paragraph should be stricken out.

FINDING 24.

Amend finding twenty-four by inserting after the first paragraph thereof, a paragraph as follows:

During this period, from 1900 until the compromise settlement was made in the Choctaw-Chickasaw

either Mr. Winton or the Dawes Commission. Technically that statement may be considered correct, but the question propounded to Captain McKennon, and his answer thereto, fix the time when the said index was furnished the Dawes Commission, that is, said index was furnished to Captain McKennon to assist him in preparing the schedule of March 10, 1899, R. 402, Q. 6, and while Mr. Owen did not fix the year that he furnished the index to Mr. Winton, from a reading of his deposition where he testified about furnishing said index to Winton, it is evident that he furnished it to him about the time he went to Mississippi for the purpose of locating and assisting in the identification of the Mississippi Choctaws by the Dawes Commission in the early part of 1899, certainly prior to the making of the schedule of March 10, 1899. R. 294.

Counsel for the Defendants, on page 330 of the record, Vol. 10, says, referring to this alphabetical index, that

"it is probable that this list was prepared for the use of the Indian agent during his incumbency."

By "Indian agent," reference is made to Mr. Owen. There is nothing in this record to warrant such a statement, it was untrue as a matter of fact, and it is respectfully submitted that it is wholly improper for counsel for the Defendants to undertake to support his contention by *submitting to the Court probabilities of his own imagination*. The Court should not be asked to make findings of fact supported by anything other than competent evidence, and certainly not by something which the Counsel for the Defendants states is only probable. This record shows that Owen prepared this alphabetical index at considerable expense and that he furnished it to the Dawes Commission for the purpose of assisting that Commission

agreement of July 1, 1902, the Choctaw Nation and the Dawes Commission, especially members McKennon and Bixby, were opposed to recognizing the rights of the Mississippi Choctaws to citizenship in the Choctaw Nation, and contended that they had no rights and ought not to be enrolled as such citizens, and that no attention should be paid to their said claim to citizenship in the Choctaw Nation. Dep. of Ex-Indian Comm'r W. A. Jones, R. 3272, 3283, 3292, 3296; Dep. of Van Hoy, R. 3254-5-6.

The first paragraph of finding twenty-four is within itself practically enough to warrant the Court finding the facts in the paragraph last above proposed as an amendment to this finding, but the Court's attention is invited to what the witnesses Jones and Van Hoy have testified to on this question, which is as follows:

Indian Commissioner Jones said:

"Q. During the time that you were Commissioner what was the attitude of the Dawes Commission toward the Mississippi Choctaws?"

"A. Why, it was hostile, steadily so, so far as the Indian Office was concerned."

"Q. In what ways did they evidence their hostility?"

"A. They would come to me and discuss the matter and express their opinion that the Mississippi Choctaws had no rights and ought not to be enrolled, and that no attention ought to be paid to their claim. Judge McKennon especially was hostile, and I think Mr. Bixby also, both were at that time members of the Commission."

"Q. Did that hostility continue during your entire term of office?"

"A. I think it did." R. 3272.

With reference to the Act of July 1, 1902, Commissioner Jones testified as follows:

"Q. Do you recall what was the attitude of the Choctaw Nation with respect to that provision?"

"A. No, I don't remember. I know that the representatives of the Choctaw Nation wanted to get everything they could."

"Q. For the Mississippi Choctaws, you mean?"

"A. Yes, sir. *That is, the attorneys for the Mississippi Choctaws.*"

"Q. I am speaking of the attorneys for the Choctaw Nation, who were Mansfield, McMurray & Cornish."

"A. I don't remember what their attitude was."

"Q. Did they go to you about this proposition at all?"

"A. I think Mr. McMurray did several times, but as to what the conversation was, I don't remember. They visited my office a number of times, but generally on other matters."

"Q. Do you recall whether any members of the Dawes Commission were in Washington at the time of the hearings on this act?"

"A. I think they were."

"Q. Do you recall whether they were advocating this full blood amendment?"

"A. No, I don't remember. *The only thing I do recall is that they were opposed to considering anything favorable to the Mississippi Choctaws, but I don't remember what their attitude was in regard to this.*"

"Q. Well, isn't that the only thing in that act which is favorable to the Mississippi Choctaws?"

"A. It seems to me that is the only thing. Judge McKennon is the only man who discussed the situation with me thoroughly. Mr. Bixby was here a good deal, but he and I disagreed right on the start as to the rights of the Mississippi Choctaws, and we agreed to disagree, so he didn't bother me, but he spent a great deal of time before the Committee of Congress and I *know he was hostile to the Mississippi Choctaws.*"

R. 3283.

"Q. Do you recall the circumstances of the retirement of Commissioner McKennon?"

"A. No, I do not. I may have known about it at the time, but I don't recall it now."

"Q. For the purpose of refreshing your recollection, do you recall any arrangements that Mr. McKennon had made with the firm of Mansfield, McMurray & Cornish to become a member of the firm in the representation of the Choctaw and Chickasaw tribes?"

"A. I have heard of that but I don't know that it is true."

"Q. Did you notice any change in Mr. McKennon's attitude toward the Mississippi Choctaw Indians after about December, 1909" (1899) ?

"A. No, I don't remember about that, Mr. Balingier. The only thing I do recall is that as far as the intercourse with the Indian Office and with me personally is concerned he was not friendly to the Mississippi Chctaws." R. 3292.

"Q. Was he (McKennon), in 1902, opposed to the recognition of the full-blood Indian as a 14th Article claimant?"

"A. *Yes, he was always opposed to it.*"

"Q. Do you know what the attitude of Mr. Bixby was at that time with reference to the matter?"

"A. As I stated before, they were agreed on everything. *Mr. Bixby was at one time violently opposed to the matter*, but whether he experienced a change of heart I don't know. The last time I had any conversation with him he was very much opposed to it."

"Q. Then, so far as you know, all the members of the Dawes Commission were in 1900 and subsequent thereto opposed to legislation that would recognize the Mississippi Choctaw Indians?"

"A. Yes. R. 3295-6. (*Italics mine.* W. W. S.)

See also McKennon's Dep. R. 407-8.

On this question Van Hoy, at that time a law clerk in the Indian Office, testified as follows:

"Q. What was the attitude of the Dawes Commission relative to the rights of the Mississippi Choctaws while you were in office?"

"A. *Intensely hostile.*"

"Q. How did the Dawes Commission evidence their hostility?"

"A. By frequent official reports. By frequent conversations with myself and other employees in the office—and also by being in constant attendance upon the Secretary and committees in Congress while the Congress was in session, and opposing proposed legislation for the Mississippi Choctaws."

"Q. Were you personally present when they interposed such objections?"

"A. Before the Department, yes. Before the Committees in Congress, no. But several times—I won't give specific instances—I have heard them discussing matters with different members of Congress in these Mississippi Choctaw cases."

"Q. Did they at any conference in the Department at which you were present evidence hostility?"

"A. *Yes, I would say hundreds of times.*"

"Q. Did the members of the Commission in personal conversation with you ever evidence their hostility?"

"A. *Yes, sir.*"

"Q. State the circumstances and facts."

"A. The circumstances were simply that Mr. McKennon generally and Mr. Bixby and Mr. Breckinridge were in my office several times every winter when legislation was pending and conversed and talked with me officially and unofficially about the Mississippi Choctaws, as they did other legislation and in every instance *they evinced hostility by saying the Mississippi Choctaws were entitled to no rights, and should have no rights, and should never be enrolled.*"

"Q. Did you ever take any official action reversing the action of the Dawes Commission relative to the rights of the Mississippi Choctaws?"

"A. I have."

"Q. State what it was."

"A. To prepare for the signature of the Commissioner a great many reports to the Secretary; preparing reports for the signature of the Commissioner for transaction (transmission) to the Secretary recommending the reversal of the actions of the Commission. I can tell you of what some of them consisted."

"Q. Go ahead and put it all in."

"A. The Dawes Commission had been instructed by the Secretary, acting under the statute, to make rolls of the Mississippi Choctaws for enrollment. Amongst other things the Commission arbitrarily and absolutely refused to accept any applications, or file any applications, or make any record of an application, or even to note on the back of an application its rejection. * * * On another occasion when the Commission had refused to transmit all the evidence, I prepared another report to the Secretary and he forced the Dawes Commission then to take evidence and transmit the evidence to the Department. We had great trouble getting any information from the Dawes Commission, concerning the Mississippi Choctaws." R. 3454-6.

That Chairman Bixby was opposed to recognizing the rights of the Mississippi Choctaws is evidenced by a brief on file with the Attorney General, *opposing those rights*, and undertaking to justify the ruling of the Dawes Commission. This brief is set out at pages 3739-3742 of the record.

Chairman Bixby, of the Dawes Commission, in this brief resisted the enrollment of a mixed blood child of a full blood father entitled to enrollment under the agreement of July 1, 1902, showing, in the most peremptory manner, his opinion that under the law no Mississippi Choctaw full blood had any right to be enrolled unless he could show that his ancestor had literally complied with the Fourteenth Article of the Treaty of 1830, and he says: "

"It will be seen from this that no provision is made for the identification of any person as a Mississippi Choctaw unless their claim to identification is based upon a compliance with the Fourteenth Article of the Treaty between the United States and the Choctaw Nation, concluded September 27, 1830," R. 3740.

which the Commission, in its report of March 10, 1899, had emphatically stated to Congress the Mississippi Choctaws could not do.

This attitude of the Dawes Commission is of the most urgent importance since the court has been under the impression that the Dawes Commission was making it its special duty to look after and enroll the unfortunate Mississippi Choctaws whereas, the Dawes Commission, having put this construction on the law, then sent to Congress on February 27, 1901, an agreement only recognizing Mississippi Choctaws "duly identified," and repeated this in the proposed agreement submitted to Congress on March 26, 1902, where again they use the language "duly identified," and which would, under this interpretation, have excluded practically all the Mississippi Choctaws. This attitude, together with their letter of May 19, 1902, R. 2881, and the letter of the Interior Department of June 3, 1902, R. 2879, approving said letter of May 19, 1902, is proof conclusive of record evidence, officially signed, showing where the Dawes Commission and the Interior Department stood in this "long and somewhat furious contest" for the enrollment of the Mississippi Choctaws.

That the representatives of the Choctaw Nation were opposed to recognizing the rights of the Mississippi Choctaws is shown by a statement made by Senator Stewart on the floor of the Senate, June 24, 1902, when considering Section 41 of the supplemental agreement of July 1, 1902. Referring to and opposing that section, Senator

Stewart, then Chairman of Senate Committee on Indian Affairs, said:

"But the importation of the Mississippi Choctaws to this country, the Choctaws in the Territory would regard as unjust, so their representative tells me. I think it would be an outrage—I think it would defeat the Treaty." Cong. Rec. Vol. 35, part 7, pp. 7287-97.

Further amend finding twenty-four by adding thereto a paragraph as follows:

"For some reason not apparent upon the face of the statute the Dawes Commission invoked a species of technical refinements and in its quasi judicial capacity construed the act of May 31, 1900, as prospective in its operation, and required all applicants thereunder to trace their ancestry to Mississippi Choctaw Indians who remained in Mississippi and received patents for lands under the Fourteenth Article of the Dancing Rabbit Creek Treaty. It was a most restricted ruling and resulted, as above stated, in the enrollment of but six or seven persons out of from 6,000 to 8,000 applicants."

This statement of fact is a truth of the highest importance in this case, and is taken from the opinion of the Court, p. 54.

FINDING 25.

Amend finding twenty-five by adding thereto a sentence as follows:

The said Choctaw Cotton Company was on the 7th day of August, 1911, dissolved, and its charter annulled and surrendered by decree of the Circuit Court of Kanawa County, W. Va., and all of the stock of

said Choctaw Cotton Company has been filed in the Court by Owen and Winton, the owners thereof. R. 305, 2518, 2622-3, R. 2805.

FINDING 26.

Amend finding twenty-six, first paragraph, line six, by striking out the word "section," and insert in lieu thereof the word "sections," and after the figure 13, insert the following:

14 and 15.

Further amend finding twenty-six by striking out the second and third paragraphs, and insert in lieu thereof three paragraphs as follows:

"MISSISSIPPI CHOCTAWS

"13. All persons heretofore identified by the Commission to the Five Civilized Tribes as Mississippi Choctaws, and whose names appear upon the schedule dated March 10, 1899, prepared by said commission under the provisions of the act of Congress approved June 28, 1898, 30 Stats., 495, and such full-blood Choctaw Indians residing in the State of Mississippi, and such full-blood Choctaw Indians as may have removed from the State of Mississippi to Indian Territory, as may be identified by said commission, shall alone constitute the 'Mississippi Choctaws' entitled to benefits under this agreement.

"14. All 'Mississippi Choctaws,' as herein defined, who shall remove to and in good faith establish their residence upon the lands of the Choctaws and Chickasaw tribes within six months after the *ratification* of this agreement shall be enrolled by said commission upon a separate roll designated 'Mississippi Choctaws;' and lands equal in value to lands allotted to citizens of the Choctaw and Chickasaw tribes shall be

set apart for each of them. All such persons who reside continuously upon the lands of the Choctaw and Chickasaw tribes for a period of three years after enrollment as above provided shall, upon proof of such continuous residence, receive patents as provided in the Atoka agreement, and they shall hold the lands thus allotted to them as provided in the Atoka agreement for citizens of the Choctaw and Chickasaw tribes.

"15. If, at the end of three years after such enrollment, any such 'Mississippi Choctaw' fails to make proof of continuous bona fide residence upon said lands as above provided, he shall be deemed to have acquired no interest in the lands thus set apart to him, and the said lands shall be sold at public auction for cash under rules and regulations prescribed by the Secretary of the Interior and the proceeds paid into the Treasury of the United States to the credit of the Choctaw and Chickasaw tribes. Such lands shall not be sold for less than their appraised value according to the appraisement provided for in the Atoka agreement. Upon payment of the full purchase price patent shall issue to the purchaser in accordance with the provisions of the Atoka agreement wherein it provides for patents to allottees." House Doc. 490, 65th Cong., 2d Sess., p. 12.

The above three sections were subsequently amended at a conference between representatives of the Interior Department, the Dawes Commission, and the delegates of the Choctaw and Chickasaw tribes. Said Sections 13, 14 and 15 as amended at said conference read as follows:

"MISSISSIPPI CHOCTAWS

"13. All persons duly identified as Mississippi Choctaws by the Commission to the Five Civilized Tribes under the act of Congress approved June 28, 1898, or the act of Congress approved May 31, 1900, may, at any time prior to September 1, 1901, make

bona fide settlement within the Choctaw-Chickasaw country, and on proof of such settlement to such commission on or before December 31, 1901, may be enrolled by such commission as Mississippi Choctaws entitled to allotment, which enrollment shall be final when approved by the Secretary of the Interior.

"14. When any such Mississippi Choctaw shall have continuously resided upon the lands of the Choctaw and Chickasaw Nations for a period of three years, including his residence thereon before and after such enrollment, he shall, upon due proof of such continuous residence, made in such manner and before such officer as may be designated by the Secretary of the Interior, receive a patent for his allotment, as provided in the Atoka agreement, and he shall hold the lands allotted to him, as provided in that agreement for citizens of the Choctaw and Chickasaw Nations.

"15. If within four years after such enrollment any such Mississippi Choctaw, or his heirs or representatives if he be dead, fails to make proof of such continuous bona fide residence for the period so prescribed or up to the time of the death of such Mississippi Choctaw in case of his death after enrollment, he, and his heirs and representatives if he be dead, shall be deemed to have acquired no interest in the lands set apart to him, and the same shall be sold at public auction for cash, under rules and regulations prescribed by the Secretary of the Interior, and the proceeds paid into the Treasury of the United States to the credit of the Choctaw and Chickasaw tribes. Such lands shall not be sold for less than their appraised value, according to the appraisal provided for in the Atoka agreement. Upon payment of the full purchase price patent shall issue to the purchaser in accordance with the provisions of the Atoka agreement, wherein it provides for patents to allottees." House Doc. 490, 56th Cong., 2d Session, p. 5.

Further amend the fourth paragraph of said findings

twenty-six by striking out the first line, and insert in lieu thereof the following:

The effect of these amendments at said conference in the Interior Department was to strike out the recognition of

FINDING 27.

Amend finding twenty-seven by striking therefrom the second sentence, as follows:

During that year and the making of this roll, the conduct of said Winton and his associates, and that of James E. Arnold and Louis P. Hudson increased the work of enrollment, and impeded its progress.

The second sentence of this finding above set out is objected to for the reason that the *third* sentence excluding the last eleven words, correctly states the facts as to what happened at this time in Mississippi. With the *exception of this sentence and the last eleven words of the last sentence*, finding twenty is practically the same as the facts stated in the fourth paragraph of the Defendants' eighth request, and the Plaintiffs' amendment hereinbefore proposed to said finding twenty-seven. Defendants' brief, pp. 10, 11, Plaintiffs' brief, R. Vol. 10, p. 53.

The evidence in the case establishes the fact that Winton advised those Indians whose names appeared on the schedule of March 10, 1899, that it was not necessary for them to appear again before the Dawes Commission for identification, that to do so they might put their rights in jeopardy, and this fact is stated in that part of finding twenty to which no objection has been made by either the Plaintiffs or the Defendants.

No one has testified that this advice given by Winton

increased the work of enrollment. The strongest evidence as to this fact is that Winton's advice was "a matter of a great deal of annoyance" and interfered with the work of the Government, R. 436, 468, 491-2, in the opinion of the witnesses Beall, Bixby and Emerson.

Winton was counsel for and advising the Mississippi Choctaws as to what he conscientiously believed to be best for the Mississippi Choctaws to do in the matter of appearing before the Commission a second time for identification. When the advice was given the schedule was a finality under the law but the law was changed at a later date so as to require the approval of the Rolls by the Secretary of the Interior. It may be said, and no doubt was the opinion of these three witnesses for the Defendants, that Winton's advice to his clients interfered with their ideas as to how the work of identification should be conducted. The same statement can be made as to an attorney in the trial of a case, before this or any other court. No doubt counsel for the Defendants is of the opinion that the action of counsel for the Plaintiffs in the present case in moving to amend findings of fact, moving for a new trial, or taking any other step in the interests of his clients which causes work on the part of the Court, or on the part of counsel for the Defendants, is an interference with the trial of the case. Nevertheless counsel for the Plaintiffs is doing what he conscientiously believed to be his duty, and if Winton, in Mississippi, in advising the Indians as he did, was doing what he conscientiously believed to be his duty and for the best interests of his clients, the Mississippi Choctaws, the findings of fact should not contain a criticism of that action based on an opinion of a witness uninformed as to Winton's work among and for the Indians.

When Winton was advising the Mississippi Choctaws that it was not necessary for them to appear a second time

before the Dawes Commission for identification, he was standing on the full blood rule of evidence as was the Dawes Commission, which rule of evidence that Commission recognized in its report of March 10, 1899, and confirmed by the Interior Department August 10, 1899, but which was subsequently *disregarded and reversed by the Dawes Commission* in its report of May 19, 1902, R. 2881, where that Commission found that only Josephine Hussey, *et al* (seven Indians), were entitled to identification as Mississippi Choctaws. This fact alone should justify Winton in so advising the Indians, for it would have done them no good whatever to have appeared a second time before the Commission for identification. Eighteen hundred of the Indians whose names were on the schedule of March 10, 1899, did appear a second time for identification by the Dawes Commission, and their applications were refused and the Commission continued to refuse the applications of all Mississippi Choctaws for identification until the passage of the Act of July 1, 1902, which act re-established and put in force the full blood rule of evidence.

Winton's advice, therefore, was sound, as the evidence taken was uniformly used against these identified Mississippi Choctaws, all of whom were rejected on this evidence taken at the second hearings.

Further amend finding twenty-seven by striking out the last eleven words—"telling them that the Commission had no authority to enroll them"—for the reason that not one witness has testified in support of such fact. This clause is *verbatim* with a clause of the eighth finding of fact requested by the Defendants, p. 11, Defendants' Original Brief, and an examination of the twelve pages, R. 33, 34, 35, 36, 420, 436, 467, 468, 491, 492, 2496, 2497 cited by the Attorney for the Defendants in support thereof will show that no witness testified that Winton was "telling

them that the Commission had no authority to enroll them." This same statement was made in Plaintiffs' former motion to amend the findings. R. Vol. 10, p. 53-4, and in the brief filed in reply thereto in behalf of the Defendants, the correctness of such statement was not denied, no reference having been made to it whatever.

FINDING 28.

Amend finding twenty-eight by adding thereto words as follows:

and have been filed in Court as evidence of authority and employment to represent the Mississippi Choctaws, and for no other purpose. R. Vol. 1, p. 25.

FINDING 29.

Amend finding twenty-nine, paragraph 1, line 5, by inserting after the word "*agreement*," words as follows:

after being amended in Congress as hereinafter set out.

From this paragraph as now drawn it would appear that said agreement was approved by act of Congress without any amendment, that is, that it was approved as transmitted to Congress by the Secretary of the Interior, which, as this finding later shows, is not a fact.

Further amend finding twenty-nine by striking therefrom the last eight words, and insert in lieu thereof words as follows:

in the way of a compromise settlement of, and to end the long and somewhat furious contest which demanded a larger recognition of the rights of the Mississippi Choctaws to citizenship in the Choctaw Na-

tion, thus granting substantially the amendments contended for by attorneys for the Mississippi Choctaws and as prayed for by them in said memorial to the House and Senate of April 24, 1902, that the full bloods should be admitted and given time after identification within which to remove to the Choctaw Country West.

In support of the last amendment above, the Court's attention is invited to the fact that numerous parties well acquainted with the efforts of Owen and Winton to secure legislative relief for the Mississippi Choctaws have stated that the amendment of Sections 41 and 42 of said agreement and the passage of said agreement *as amended* was in the nature of a *compromise* of the fight then being waged and which had been waged for several years in behalf of the Mississippi Choctaws. The evidence relied on to support the facts stated in said amendment is as follows:

COMMISSIONER W. A. JONES, in referring to the passage of the Act of 1902, said:

"I think, however, that all were satisfied that the compromise secured in the Act of 1902 was better than nothing." R. 2984, Q. 12.

WILLIAM H. MURRAY, a Member of Congress from Oklahoma, on January 8, 1915, in a statement before the Committee on Indian Affairs, stated that the amendment and passage of the act of July 1, 1902, was "*a necessary compromise.*" Part 2, p. 108, of the hearings on H. R. 20150.

THE GOVERNOR OF THE CHICKASAW NATION, Hon. D. H. Johnson, is also on record before the Senate Committee on Indian Affairs, that the agreement and passage of the Act of July 1, 1902, "*was a com-*

promise settlement." Said hearing on H. R. 20150, Part 2, p. 108.

MR. McMURRAY, former attorney for the Choctaw Nation, mentioned in the last paragraph of finding twenty-nine, and who represented the Choctaw Nation in this "long and somewhat furious contest" to obtain the rights of the Mississippi Choctaws, is also on record before said Senate Committee on Indian Affairs as stating that *the agreement and passage* of the Act of 1902 was "*a compromise measure*" and "*that it was accepted by the friends of the Mississippi Choctaws as a compromise of this controversy, and as a final settlement of the claims of the Mississippi Choctaws, * * * the Harris Amendment not having been pressed after the compromise was entered into.*" * * * The fight, at that time, to enroll Mississippi Choctaws, was "at a white heat," and "**I had become convinced that a compromise was necessary to a final settlement.**" Said hearings, Part 2, p. 106.

MR. McMURRAY also stated that in accordance with a request made by Mr. James S. Sherman, Chairman of the Indian Committee of the House, he prepared an item giving the full bloods in Mississippi another chance to go West and take lands in the Choctaw country. Said hearings, Part 2, p. 107.

SENATOR WILLIAMS, at the time of the passage of the Act of 1902 a Member of the House, testifying in 1909, in behalf of the Defendants, on the subject of compromise, said:

"Now, in that connection, I never did succeed to the bitter end, in getting all that I wanted in connection with the Mississippi Choctaws. I sought from the beginning to have them identified as Mississippi Choctaws, and upon that fact enrolled and to become entitled *ipso facto* to their rights as citizens of the Choc-

taw Nation, but the provisions in existing law, which required to remove to the Indian Territory all who were not then in the Indian Territory, in order to secure their rights, were agreed to by me, but agreed to by me because they were the best I could get. In other words, the Committee in Congress never would go the full length I wanted to go, and so far as the removal to the Territory was concerned, they were for me in *ad infinitum*, so far as I am concerned, and submitted to by me, and inserted by me also in various provisions, because I had to have them in order to get the other things. I am still of the opinion that they had the right to their share of the lands without removal from Mississippi, as citizens of the Choctaw Nation for consanguinity." R. 546.

MR. OWEN, when testifying in 1909, said:

"I favored the Choctaw-Chickasaw supplementary agreement, except in so far as it deprived full-blood Mississippi Choctaws of the rights granted in 1900, as I have heretofore explained." R. 2539.

and speaking further, he said:

"I was desirous of amending it as far as I could to minimize the injury which I saw it contained to my clients." R. 2572.

Speaking further as to this compromise, Mr. Owen said:

"Mr. Williams had an amendment which he intended to offer, recognizing the rights of the full-blood Mississippi Choctaws, along the lines of my memorial. Mr. McMurray, who was representing the Choctaw-Chickasaw Nation, drew a form recognizing the full-blood rule of evidence, in such form, however, as to be quite drastic and he gave this proposed agreement to Mr. Curtis and got Mr. Curtis to offer it as a compromise to the more liberal proposal which

Mr. Williams had intended to offer. The compromise amendment introduced by Curtis was drawn by McMurray and Van Devanter, Assistant Attorney General of the Interior Department, and Mr. Williams agreed to it as the adjustment under which the full-blood Mississippi Choctaws would have a chance to be allotted." R. 2596.

FINDING 30.

Amend finding thirty by striking therefrom the first paragraph, and insert a paragraph as follows:

The passage of the Act of July 1, 1902, as submitted by the Secretary of the Interior to Congress, was actively opposed by Owen and Winton, Attorneys for the Mississippi Choctaws, and the amendment of Sections 41 and 42 thereof were made as the result of the long contest from 1896 to July 1, 1902, inclusive, waged by Owen, Winton and associates in behalf of the rights of the Mississippi Choctaws to citizenship in the Choctaw Nation.

The amendments made in Congress to Sections 41 and 42 of said supplemental agreement were in accordance with the provisions proposed in the Harris Amendment, and as prayed for in the Winton Memorial addressed to the House and Senate on April 24, 1902, to the extent of adopting the full blood rule of evidence, allowing further time for applications and granting further time in which to remove after actual identification. Ex. 1, R. L. O., Dep. 281.

The supplemental agreement was transmitted to Congress by Secretary Hitchcock in a letter under date of March 26, 1902, in which he said:

"I very earnestly recommend that the agreement be ratified in its present form."

This agreement, together with the Secretary's letter, was presented to Congress March 27, 1902, and referred to the Committees on Indian Affairs of the House and Senate, and was reported from the Committees to the Senate and House respectively, and not considered and amended until June 18, 1902, becoming a law July 1, 1902.

Within less than thirty days after the Secretary transmitted the supplemental agreement to the two Houses of Congress, the Winton Memorial protesting against the enactment of said agreement into law without certain amendments was prepared and presented to the Senate on April 24, 1902, and referred to the Committee on Indian Affairs to accompany the Harris Amendment to Senate Bill 4848, which was the same as House Bill 13172.

It will thus be seen that Owen, Winton and associates, representing the Mississippi Choctaws, very promptly objected to the enactment of the supplemental agreement *without changes*, and in said memorial, presented arguments why changes more favorable to the Mississippi Choctaws should be made, and as far as the Government records show, were the only attorneys presenting and making arguments in favor of recognizing the rights of the Mississippi Choctaws at this time, R. 3815, X.-Q. 24-27, and there is no doubt whatever that the changes made in said supplemental agreement favorable to the rights of the Mississippi Choctaws were made as the result of the labor and arguments before the two committees and the presentation of their case to the House and Senate by Owen, Winton and associates.

The changes in said supplemental agreement were made certainly as the result of the labor of some one in behalf of the Mississippi Choctaws, for if there had been no opposition to the Mississippi Choctaws on the part of the Dawes Commission, the representative of the Choctaw

Nation and the officers of the Interior Department handling Indian affairs, the supplemental agreement would undoubtedly have contained a provision recognizing their rights, when it was framed and transmitted to Congress by the Secretary of the Interior on March 26, 1902, but the agreement as framed by these parties and transmitted to Congress by the Secretary, contained a provision providing for the recognition of the Mississippi Choctaws that would have barred them, all except "Josephine Hussey *et al.*," R. 2880. The procedure adopted in the consideration of the Committees, and the reporting of the bill without formal amendment favorable to the Mississippi Choctaws, left only one course open to the attorneys, Owen and Winton, representing those Indians, and that was to appeal directly to Congress, which was done through the Harris Amendment and the memorial of April 24, 1902.

It was agreed in Committee that the full blood rule of evidence amendment should be adopted on the floor and Chairman Sherman instructed McMurray, the Choctaw attorney, to prepare it, which he did, and Curtis offered it and it was accepted by Owen and Winton and the other friends of the Mississippi Choctaws as a compromise. See Finding 29, *supra*, pages 129-133.

The first paragraph of finding thirty to which objection is here made, states that the amendments to Section 41 of the agreement were not adopted as a consequence of the memorial of April 24, 1902.

With all due respect to the Court and to counsel representing the Government and the Indians, it is submitted that there is not one word of evidence, documentary or otherwise, in this record which will support such a negative statement of fact and the attorney for the Defendants is now and here called upon to point out such evidence if it is in the record. Statement was made to this effect in the

brief filed herein in support of Plaintiffs' motion to amend the tentative findings of fact filed December 7, 1914, and at that time counsel for the Defendants was challenged to point out such evidence in his brief replying to Plaintiffs' motion to amend said findings. The attorney for the Defendants filed a reply brief, consisting of sixty-seven printed pages, and failed absolutely to point out any evidence in support of the facts stated in this paragraph of finding 30. Not only was there a failure to point out any evidence supporting the facts stated in this paragraph as challenged to do by counsel for Plaintiffs, but he made no objection whatever to the amendment proposed by Plaintiffs, to strike out said paragraph and to insert in lieu thereof a paragraph as follows:

The Choctaw-Chickasaw Agreement, ratified July 1, 1902 (32 Stat., L. 641), as first submitted to Congress, was amended (1) as to recognize the full-blood rule of evidence; (2) to give six months after identification within which the Mississippi Choctaws might remove, and (3) to give six months after the ratification of the agreement within which the Mississippi Choctaws might make application for identification, and the amendment in these three particulars was due to the urgent demand and active work of the Plaintiff Owen and associates. R. Vol. 10, pp. 60-1-3.

Neither was there any objection made to the amendments proposed at that time by the Plaintiffs to Finding thirty, as set out on pages 63 and 4 of said motion, R. Vol. 10. On the matter of preparing brief and requests for findings of fact, the rules of the Court provide as follows:

If the Defendants' brief contains statements of fact which the claimant controverts, he must file a reply brief; otherwise it will be assumed that he concedes the facts stated. Rule 87.

Where Claimants' requested findings are not agreed to, the Defendants will point out specifically their objection to each finding and suggest any changes therein they may desire. Rule 87.

The Attorney for the Defendants not having objected to the Plaintiffs' motion to amend the findings of fact, in this particular, the Attorney for the Plaintiffs considered it as a matter of course that in the trial of the case it would "be assumed that he concedes the facts stated" in the Plaintiffs' proposed amendment in this particular, and for that reason this proposed amendment was not even mentioned or referred to in the Plaintiffs' Reply Brief and of course not as fully discussed when the Plaintiffs' motion was argued as it otherwise would have been had Defendants objected to said amendments.

It is further contended, and fully believed, that the record does not in any way, whatever, establish the facts stated in said first paragraph of finding thirty and that an examination of articles 41 and 42 of the agreement as transmitted to Congress by the Secretary, and with reference to which he in his letter of transmittal says—"I very earnestly recommend that the agreement be ratified in its present form"—and an examination of the legislation prayed for in the Winton-Owen Memorial of April 24, 1902, and the Harris amendment introduced at the instance of Owen, as stated in finding 29, p. 15, 2d paragraph, will show that the amendments made in Congress to the legislation as proposed by the Secretary of the Interior recognized the rights of the Mississippi Choctaws to citizenship in the Choctaw Nation and had it not been for these amendments and the arguments in support thereof by Owen and his associates no recognition whatever would have been given to, nor land allotted, the Mississippi Choctaws.

In considering this question, it should be borne in mind

that the Owen-Winton Memorial of April 24, 1902, presented to the Senate by Senator Harris in support of the Harris Amendment, *contains the only written argument* made to Congress in support of such amendment. It should also be borne in mind when considering this question as hereinbefore set out, that Owen was in favor of the passage of the supplemental agreement if such amendments were made as hereinbefore set out.

Reviewing the legislation as proposed by the Secretary of the Interior, the legislation prayed for in the said Winton-Owen Memorial of April 24, 1902, and the Harris Amendment, and the legislation as actually enacted by Congress, it is found that Section 41 *as originally drawn and submitted* to Congress by the Secretary, provided that the Mississippi Choctaws

"may at any time within six months after the date of final ratification of this agreement, make bona fide settlement within the Choctaw-Chickasaw country."

The legislation prayed for in said Memorial of April 24, 1902, by Owen and Winton for the Mississippi Choctaws was that the Mississippi Choctaws should be given

"twelve months after final notification of their identification to remove west" and make bona fide settlement in the Choctaw-Chickasaw country.

The legislation as enacted gave them *"six months* (instead of twelve, as prayed for) after the date of their identification as Mississippi Choctaws by said Commission to remove west and make bona fide settlement in the Choctaw-Chickasaw country."

The proposed legislation *as submitted* to Congress by the Secretary, provided that "the application of no person for

identification as a Mississippi Choctaw shall be received by said Commission *after the date of the final ratification of this agreement,*" which was September 25, 1902.

The legislation prayed for in said memorial of April 24, 1902, by Owen and Winton, attorneys for the Mississippi Choctaws, on this question, was that Congress recognize the schedule of March 10, 1899, and that they be permitted to apply the same as other Choctaws as long as the rolls were open.

The legislation as enacted allowed the Mississippi Choctaws *six months subsequent to the date of the final ratification to apply for identification, which extended the time for the taking of proof to complete the identification indefinitely, and in some cases, for years, or until the closing of the rolls on March 3, 1907, the only limit being placed upon the time within which application for identification could be made.*

The proposed legislation submitted to Congress by the Secretary *did not provide for the adoption of the full-blood rule of evidence.*

The said memorial of April 24, 1902, submitted by Owen and Winton, Attorneys for the Mississippi Choctaws, *prayed for the adoption of the full-blood rule of evidence, as set out in the Harris Amendment introduced at the instance of said Owen.*

The legislation as enacted by Congress *adopted in the latter part of Section 41, the full-blood rule of evidence as prayed for in said memorial of April 24, 1902, by the attorneys for the Mississippi Choctaws.*

The Owen memorial of April 24, 1902, also prayed for a further recognition of the rights of the Mississippi Choctaws than that granted by the legislation as enacted July 1, 1902, in this, that of providing for the recognition and enrollment of the children and grandchildren of full bloods.

This recognition by Congress at this time was not granted, but Owen and Winton continued their labors in behalf of the Mississippi Choctaws in this particular, and Congress did, by the Act of April 26, 1906, 34 Stat., 137, 145, provide for such recognition as set out in finding 31, p. 16, and the Act of June 21, 1906, 34 Stat., 341, as follows, to wit:

"No distinction shall be made in the enrollment of full-blood Mississippi Choctaws who have been identified by the United States Commission to the Five Civilized Tribes, and who had removed to the Indian Territory prior to March 4, 1906, and who shall furnish proof thereof."

The fact that Owen and Winton labored for a greater recognition of the rights of the Mississippi Choctaws than was granted in the Act of July 1, 1902, and the further fact that they continued to labor for a greater recognition of the rights of the Mississippi Choctaws for citizenship in the Choctaw Nation after the passage of that Act, does not prove that Owen and Winton were opposed to the partial recognition of those rights by the Act of July 1, 1902. Owen and Winton could have consistently been opposed to the agreement as originally transmitted by the Secretary and at the same time be in favor of and accept as favorable the partial recognition which was accorded the Mississippi Choctaws by the Act of July 1, 1902, although that recognition did not go as far as Owen and Winton wanted Congress to go, for the reason that the partial recognition granted by said amendments was in accordance with their contention. Owen wanted a larger recognition, and must be considered as favoring the recognition which was granted by the Act of July 1, 1902, as he testified he did do.

MR. WILLIAMS in his deposition testifies that

"Had it not been for Owen, I probably never would have set about it"—

that is, laboring to obtain rights for the Mississippi Choctaws to citizenship in the Choctaw Nation. R. 553.

JOHN H. STEPHENS, then a member, and now Chairman of the House Committee on Indian Affairs, says that Mr. Owen

"has been untiring in his efforts to secure the recognition of the Mississippi Choctaws, and to secure their proper enrollment. His continued attention to this matter has, in my judgment, been of great value to the Mississippi Choctaws, as he has been unceasing in his efforts to secure their recognition." (Italics mine. W. W. S.)

CONGRESSMAN LITTLE, of Arkansas, has said that Mr. Owen

"on various occasions presented strong and forcible arguments in their behalf, and has also appeared before the committees having this subject in charge in their interest;"

and that Mr. Owen's "services in connection with this legislation have been faithful and efficient." R. 318.

HON. JAMES K. JONES, then a member of the Senate Committee on Indian Affairs, has testified that the Mississippi Choctaws would not have had any recognition had it not been for the untiring efforts of Mr. Owen in their behalf. R. 317.

In support of Plaintiffs' motion to strike out the first paragraph of finding thirty, the Court's attention is invited to what has hereinbefore been said with reference to Plaintiffs' motion to amend the tentative findings of fact filed December 7, 1914. R. Vol. 10, pp. 60-63.

When testifying Mr. Owen was asked the following questions:

"X Question. In addition to the confirmation of what is known as the McKennon Roll, did you appear and urge at any time a provision such as was incorporated in the bill taking care of the full-blood Mississippi Choctaws?"

"Answer. The memorial which we filed April 24, 1902, and which was printed as a Senate Document, shows that *we demanded the full-blood rule of evidence*—that we demanded time within which to remove *after identification* and that we *demand recognition of the schedule of March 10, 1899*. We did not get all we asked for. Senator Harris introduced a bill which I drew as a proposed amendment to Senate 4848, which was the Choctaw-Chickasaw agreement, making the proposals for the amendments we desired, but not going so far as to regard the removal clause. We had abandoned that latter contention unless we could get into the courts." R. 2615.

"X Question. Did the associates of Charles F. Winton in 1902, and do they now, claim credit for the legislation enacted by Congress which resulted in the preparation, or under which the McKennon Roll was prepared?"

"Answer. The act of 1902 has nothing to do with the McKennon Roll of March 10, 1899."

"X Question. But I ask you if in 1902 they then claimed credit for the legislation theretofore enacted, or under which the McKennon Roll had been prepared?"

"Answer. In 1902 Winton and his associates claimed the credit for passing the act of 1897, of 1898, the so-called Curtis Act, requiring the identification of the Mississippi Choctaws, and preventing the Mississippi Choctaws from being barred by non-residence.

"They claimed credit for having passed an act approved May 31, 1900, which was passed in the very

identical words of the memorial submitted by Winton and his associates.

"They claimed the credit for defeating the Choctaw-Chickasaw agreement of February 7, 1901, which would have barred the Mississippi Choctaws.

"They claimed the credit for the amendments obtained in the agreement ratified July 1, 1902, by Congress, in that such agreement was modified to establish *the full-blood rule of evidence* demanded by Winton and his associates in the memorial of April 24, 1902, in that it gave them *time after identification to remove* as demanded by the memorial of April 24, 1902, in that it *extended the time within which they might make application* as demanded by the memorial of April 24, 1902.

"These were the things which Winton and his associates accomplished, which are shown by printed records of Senate and House Documents to have been accomplished by Winton and his associates." R. 2617.

It will be noted that Mr. Owen testified that Winton and his associates claim the credit for defeating the Choctaw-Chickasaw Agreement of February 7, 1901.

They caused its defeat because had the proposed agreement of February 7, 1901, been enacted into law it would have barred the Mississippi Choctaws owing to the construction placed upon the words in the first line, "*duly identified*," the Commission having reversed itself as to the full-blood rule of evidence by holding that Mississippi Choctaws to be "*duly identified*" must technically prove their descent from ancestors who had strictly complied with the provisions of the Treaty of 1830, which, with the exception of a half dozen, they were unable to do, Ex. 1, R. L. O., p. 37, and it must be remembered that the full-blood rule of evidence which the agreement contained as originally drawn was stricken therefrom in the Interior Department before that agreement was transmitted to Con-

gress by the Secretary. Ex. 1, R. L. O., 244, 248, 255.

That the long and furious contest waged by Mr. Owen, Winton and associates in behalf of the Mississippi Choctaws resulted in the proposed Chickasaw-Choctaw agreement being amended so as to recognize the rights of those Indians and that it no doubt was the work done before the Indian Committee of the House by them as attorneys for the Mississippi Choctaws is evidenced by the fact that said amendments had been considered in committee and agreed to and were in reality committee amendments as shown by the remarks of Mr. McRae and Mr. Williams referring particularly to the provision adopting the full-blood rule of evidence. Cong. Rec. June 18, 1902, p. 7039—Vol. 35, part 7.

It was at this time that Mr. Owen appeared before the Committee on Indians Affairs of the House, June 9, 1902, and made an argument in favor of said amendments. R. 3815, X-Q. 24-27.

FINDING 31.

Amend finding thirty-one by adding thereto the following paragraph:

Owen and Winton on behalf of the Mississippi Choctaws prepared a memorial which was submitted to Congress by Representative Stephens, March 15, 1904. Ex. R. L. O., p. 341, and in the Senate by Senator Money, Cong. Rec., 3025, March 9, 1904, in which they prayed that no distinctions against Mississippi Choctaws should be made (said Ex. 1, 342) and Congress, at the instance of Owen, R. 299, embodied in the Act approved June 21, 1906, 34 Stat., 341, a provision as follows:

“No distinction shall be made in the enrollment of full-blood Mississippi Choctaws who have been identi-

fied by the United States Commission to the Five Civilized Tribes, and who had removed to the Indian Territory prior to March 4, 1906, and who shall furnish proof thereof."

Further amend finding 31 by adding thereto a second paragraph as follows:

From 1896, when Owen and Winton first became interested in the matter of the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation to 1906, they, as attorneys for said Mississippi Choctaws, persistently and continuously presented the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation, and arguments both oral and written in support thereof, to Congress, the committees of Congress, Members of Congress, the Secretary of the Interior, the Bureau of Indian Affairs, the Dawes Commission and the officials and representatives of the Choctaw Nation, and during said period Owen was recognized by the committees of Congress, Members of Congress and other officials of the Government, as the Attorney for the Mississippi Choctaws, and as said attorney faithfully, persistently, forcefully and successfully represented said Mississippi Choctaws before Congress, the committees of Congress, and the officials of the United States and the Choctaw Nation, and had it not been for the labor of said Owen in their behalf, the rights of the Mississippi Choctaws to citizenship in the Choctaw Nation would not have been, as it was, recognized by Congress. R. 315, 316, 317, 318, 319, 410-11, 413-15, 416, 553, 2527, 2573.

The facts stated in the above paragraph are supported by statements of such men as Senator John Sharp Williams, R. 535, 542, 548, 552-6.

Senator James K. Jones, R. 317, 413-415.

Senator H. D. Money, R. 318.

Hon. John A. Little, Congressman from Mississippi, R. 318.

Hon. John H. Stephens, Congressman from Texas, R. 318, 1115-16.

Vice-President J. S. Sherman, R. 317.

Hon. Thomas P. Smith, formerly Acting Commissioner of Indian Affairs, R. 315.

Hon. Preston C. West, then an attorney at law in Oklahoma but now the Assistant Attorney General for the Department of the Interior, R. 315-16, 381-8.

In fact, all of the evidence in the case, including the testimony of officials of the Government and of the Choctaw Nation, and the interveners, is to the effect that during all this time—1896-1906—Owen represented the Mississippi Choctaws, as above stated, in the matter of their claim to citizenship in the Choctaw Nation. It is true, as inferred by the Court's opinion, that Owen, during this period, especially the early part thereof, contended in behalf of the Mississippi Choctaws, for a larger recognition of their rights than was actually obtained, but that fact only emphasizes the extent of the labor and contentions made in behalf of the Mississippi Choctaws, and should not be used by the Court to his detriment, and certainly does not warrant the statement that he was opposed to the recognition of the rights of the Mississippi Choctaws as granted in the Act of July 1, 1902. It is true that act did not go as far as he wanted Congress to go, nor as far as Congress later did go in the two acts of 1906. 34 Stat., 140, 341.

FINDING 32.

Amend finding thirty-two by adding thereto four paragraphs as follows:

The value of the undistributed property of the Choc-

taw-Chickasaw Nation is shown by a memorial of the Choctaw General Council of the 8th of October, 1909, placing the value of the unallotted lands, the coal and asphalt lands, the undisposed of town lots and the public buildings, belonging to the Choctaw tribe of Indians, the Choctaw Capitol building, the academy and seminary buildings, the Court House and jails, undisposed of, at sixty millions of dollars and in which the Mississippi Choctaws have an undivided equal interest with all other Choctaws. See Memorial Senate Doc. 390, 61st Congress, 2d Session, p. 123.

In the matter of the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation, the plaintiff Owen, during the period of several years in which he was engaged in their behalf, representing them as their attorney, protecting their rights and obtaining the recognition and legalization of their rights to citizenship in the Choctaw Nation, has expended approximately thirty-five thousand dollars in cash for which he has not been reimbursed. Neither Winton nor any of his associates have ever received any compensation whatever for any of the services rendered in behalf of the Mississippi Choctaws. R. 302-3, 2624.

From the foregoing primary facts the Court finds as an ultimate fact, so far as it is a question of fact, that the memorials of Winton and his associates with which the Senate and House of Representatives were flooded between 1896 and 1906, the arguments before the Committees of the Senate and of the House, the arguments before the Dawes Commission, the United States Courts, the Attorney-General, and the Interior Department created a powerful sympathy in favor of the Mississippi Choctaws, caused Congress to pass numerous acts in their interest, caused the identification of the Mississippi Choctaws, and resulted in the enrollment of 1,643 persons on a separate roll under the act of July 1, 1902, as amended by the acts of April 26 and June 21, 1906, 34 Stat. L. 137, 145, 341.

From the foregoing primary facts the Court finds as an ultimate fact, so far as it is a question of fact, that the said 1,643 Mississippi Choctaws who were admitted to citizenship in, and received allotments as members of, the Choctaw Nation, obtained the right to become such citizens and thereby receive allotments as a result of the labor and work done by Winton, Owen and associates during a period of several years prior to the passage of the acts under which they were enrolled and allotted, and that a reasonable, just and equitable compensation for such services on the principle of *quantum meruit* would be a sum equal to _____ per cent of \$15,000,000.00, the total value of the estates thereby received by the said 1,643 Mississippi Choctaws, or the sum of \$_____. R. 302, 345-6, 352-3, 472, 2524, etc.

In support of the amendments above offered to finding thirty-two the Court's attention is invited to the brief hereinbefore filed in behalf of Robert L. Owen, where the subjects covered by said amendments are treated; pages 12 to 18, and 74 to 76, as to the value of the estate received by the Mississippi Choctaws as a result of being made citizens in the Choctaw Nation; pages 18 to 36, as to the extent of the services rendered the Mississippi Choctaws by Winton, Owen and associates, and pages 76 to 86, as to what would be an equitable or just compensation on the bases of *quantum meruit* for the services rendered by Winton and associates to the Mississippi Choctaws.

At the same time this case was argued, in October, 1913, there was being argued a case in the Court of Appeals of the District of Columbia, that of *Arnold vs. Lane, Secretary of Interior, and Lee*, No. 2513. The attorneys representing the Secretary of Interior in speaking of the jurisdictional act by virtue of which the present suit was brought, and the value of the Mississippi Choctaw property, said, at page 11 of their brief, as follows:

"Finally, we may ask, where are the Wintons, *
* *, their associates or assigns—their real associates? They are the people for whose benefit this legislation was attempted. They are not here. Only the interloper Arnold is here. He seems to be everywhere. The others, the real beneficiaries of the legislation, are evidently satisfied with their lien on the \$13,000,000.00 of land. They are pursuing their proper remedy. They are not coming into a foreign Court, which has not original legislation, to determine the merits of their claims."

HON. P. J. HURLEY is attorney for the Choctaw Nation, and during the last session of Congress appeared before the sub-committee of the Committee on Indian Affairs of the House of Representatives on the subject of enrollment in the Five Civilized Tribes. At pages 491 and 2, Mr. Hurley, relative to the value of the property or estate obtained by the Mississippi Choctaws as a result of legislation enacted in their behalf, said:

"This agreement (referring to the Choctaw-Chickasaw agreement of 1902) held the rolls of citizenship of the Choctaw and Chickasaw Nations open to Mississippi Choctaws after they had been closed to all other applicants. It established a rule of evidence in favor of the full-blood Mississippi Choctaws and 1,643 Mississippi Choctaws were, under this legislation, granted enrollment in the Choctaw Nation as a gratuity and not as a matter of right. *The property given to these 1,643 Indians is valued at not less than fifteen million dollars.* It is the price that the Choctaw and Chickasaw Indians of Oklahoma paid for a settlement of the Mississippi Choctaw question in 1902."

While the above may not be, strictly speaking, admissible under the rules of evidence as evidence to establish the value of the estate or property obtained by the Mississippi Choc-

laws as a result of this legislation, it is, however, permissible to refer to that statement as an admission made by the representative of the Choctaw Nation on the question of the value of the property obtained by the Mississippi Choctaws as a result of the legislation in question.

The four paragraphs above proposed as an amendment to finding thirty-two are the same as four paragraphs Plaintiffs proposed as amendments to finding thirty-two of the tentative findings filed December 7, 1914, and to which no objection was made by the Defendants in their "Objection to Plaintiffs' Request for Amendment of the Findings." These paragraphs treat of the value of the estate obtained by the Mississippi Choctaws as a result of being recognized as citizens of the Choctaw Nation; the amount of money expended by Owen, Winton and associates in their effort to obtain the legislation resulting in the recognition of the Mississippi Choctaws' right to citizenship in the Choctaw Nation and the value of the services rendered by Winton, Owen and associates.

In view of the remarks of the Court in the last paragraph of the opinion, p. 67, the attorney for the Plaintiffs would feel some embarrassment in discussing the subject of compensation, were it not for the fact that his duty to his clients demands that that subject be discussed but, and with the greatest respect for your Honorable Court, he is constrained to say that in doing so he feels that he has no apology to offer for the contentions made in this case as to what is or should be allowed by the Court "on the basis of the principle of *quantum meruit*" as reasonable compensation for the services rendered to the Mississippi Choctaws by Plaintiffs, and is willing to be governed, and accept the Court's criticism, the same as though he drew the petition herein and was the senior counsel in this case at the time all the evidence in question was taken and said contentions

made, knowing, as he does know, that similar contentions have been made in almost, if not quite, similar cases, not only in your Honorable Court and the Supreme Court of the United States but before Congress, the guardian of the Indians, as well, and so far as the record shows the contentions of the attorneys in such similar cases met with approval rather than criticism for judgment was rendered in their favor.

It is well known among the legal profession and the courts, that the courts are not bound to render judgment for the full amount claimed in a case, and it is equally well known that attorneys almost universally are very careful, and, in fact, should be, to claim or demand judgment for an amount large enough to cover that for which the proof in the case warrants.

It is also well known to the legal profession and the courts, and your Honorable Court has more than once so held, that judgment would not be given for more than the amount claimed, notwithstanding the fact that the proof warranted judgment for a much larger sum.

A review of the cases in which this Court and the Supreme Court of the United States, as well as Congress and Government officials, have fixed or approved the amount of compensation to be paid attorneys for services rendered Indians or Indian tribes, it is here contended, justifies the claim or demand being fixed by Plaintiffs at a sum equal to 15 per cent of the value of the property or estate obtained by the Mississippi Choctaws as a result of the legislation in question.

In the case of the Ottawa and Chippewa Indians against the United States, 42d Ct. Clms., 240, 518, the Jurisdictional Act authorized the Court to fix the compensation to be paid the attorneys for said Indians, and in that case the

Court fixed the compensation at a *sum equal to 15 per cent of the recovery*.

In the case of the Colville Indians, 43d Ct. Clms., 497, a short uninvolved case, decided May 25, 1908, this Court entered judgment for a *sum equal to 4 per cent of the recovery*. In the Maish-Gordon contract with the Colville Indians, the compensation was fixed at 15 per cent, which was reduced by the Commissioner of Indian Affairs to 10 per cent when he approved said contract.

In the case of the Ute Indians against the United States, decided February 13, 1911, 46 Ct. Clms., 225, your Honorable Court allowed a *fee of 6 per cent*. In this case the principal services were rendered before Committees in Congress. The whole case was tried upon the record, which was made up of official reports and public documents.

In the case of the Sisseton and Wahpeton Indians against the United States, decided May 13, 1907, 42 Ct. Clms., 416, a case not to be compared in difficulty with the Mississippi Choctaw case, your Honorable Court allowed a *sum equal to 12 per cent of the amount of recovery*.

In the Eastern Cherokee case, No. 23212, the Court awarded the attorneys on May 26, 1906, a *sum equal to 10 per cent of the amount of recovery*. 45 Ct. Clms. 10, 136-7.

The Eastern Cherokee case was brought before Congress in 1900. It was not as difficult a case as the Mississippi Choctaw case. The case was based upon the Treaty of 1835, and *in addition to the fee of 15 per cent*, the Secretary of the Interior allowed a fee of \$150,000 to the Attorney for the Cherokee Nation, for services rendered in said case to the Eastern Cherokees, *making a total of 18 per cent*, and such men as the Hon. Francis M. Cockrell, United States Senator from Missouri, and many other men

of high standing, testified that 15 per cent in the Eastern Cherokee case was an equitable and just compensation.

In the case of the Old Settlers Cherokees, decided by the Supreme Court of the United States in 1892, *a fee equal to 35 per cent* was allowed by Congress. The Old Settlers case was based upon the treaty of 1846. The Old Settlers contracted with their attorneys, Bryan, Wilson and Hendricks, fixing the compensation at 35 per cent, and this contract was recognized by Congress when appropriation was made to pay the attorneys. The services rendered by the attorneys in behalf of the Old Settlers (Western Cherokees) were before the Court of Claims, the Supreme Court, and also involved labor before the Committees in Congress, before they had a right to be heard in the courts. The Western Cherokee Council repeatedly authorized the payment of 35 per cent and that amount was finally and actually paid. 28 Stat. L., 451.

Congress, on August 15, 1894, 28 Stat. L., p. 1010, appropriated \$10,000 out of the 35 per cent to John T. Heard, in language as follows:

"The sum of Ten Thousand Dollars, or such part thereof, if any, as shall remain of the *thirty-five per centum set apart by resolution of various councils of said 'Old Settlers' or Western Cherokee Indians*, for the expense of the prosecution of said claim, after the ascertainment and determination of the amount of such fees and charges and other claims as are properly chargeable against the said thirty-five per centum; Provided, that the Secretary of the Interior shall first determine that the said professional services were rendered to said 'Old Settlers' or Western Cherokees, and were contracted for in good faith, by persons authorized to represent said Indians."

This matter was again before Congress, and on June 10, 1896, the Secretary of the Interior was directed to with-

hold any further distribution of the 35 per centum of said estate to said attorneys, in the following language:

"That the Secretary of the Interior be, and he is hereby, directed to withhold any further distribution and payment out of the money derived from *thirty-five per centum* of the judgment in favor of the Old Settler or Western Cherokee Indians against the United States, in the sum of Eight Hundred Thousand, Three Hundred Eighty-six Dollars, and thirty-one cents, *set apart for the payment of expenses and for legal services justly and equitably payable on account of the prosecution of said claim, until otherwise authorized by law.*" 29 Stat., L. 344.

On June 7, 1897, 30 Stat. L., 88, the remainder of the 35 per centum reserved for payment of legal services rendered and expenses incurred, was distributed by Congress, *thus recognizing by a series of Statutes that 35 per centum was a fair compensation in the Old Settlers case.*

In the case of the Cherokee Nation against the United States, otherwise known as the Net Proceeds case, decided by the Supreme Court of the United States November 15, 1896, 119 U. S., p. 1, Congress allowed as compensation, *a fee equal to fifty per cent* to be paid by the authorities of the Choctaw Nation, and the fee as paid in the Net Proceeds case **amounted to \$1,413,894.31.**

On this question see the Original Brief filed herein in behalf of Robert L. Owen, R. printed pages 78-84.

Two attorneys, members of the bar of your Honorable Court, have testified on this question. They are Messrs. Harry Peyton and Benjamin Carter, both of whom are well, and, no doubt, favorably known to each member of the Court. After examining a statement of fact setting up the services rendered by Owen, Winton and associates, and taking into consideration the value of the property

obtained by the Mississippi Choctaws as the result of said services, they testified that a sum equal to 25 per cent and 20 per cent, respectively, would be fair and reasonable compensation in this case to the attorneys who represented the Mississippi Choctaws. R. 2626-37, 2642-3.

MR. OWEN, on this question, testified as follows:

"Winton and his associates seek in this proceeding nothing more than was contemplated by the Jurisdictional Act, that they should be awarded a reasonable fee for services performed on the basis of quantum meruit." R. 2534.

A matter to which it is proper to invite the Court's attention, not for the purpose of fixing the compensation to be allowed by the Court on the basis of *quantum meruit*, but for the sole purpose of showing that the amount of compensation fixed in the original contracts with the Mississippi Choctaws was not done in a clandestine way, but to show that Winton and associates had nothing to conceal about the execution of said contracts, is the fact that the contracts entered into by guardians of minors with Winton were submitted to, and approved by, the Judges of the Courts in Mississippi appointing the guardians, as is shown by the deposition of Thomas B. Sullivan, when he was being cross-examined by Messrs. Anderson and Hill, representing the Defendants as follows:

"35. Cross-interrogatory. Could these full bloods speak the English language?"

"Answer. A great many of them could; the most of them could; they didn't speak it well, but they spoke it."

"36. Cross-interrogatory. Could they read and write?"

"Answer. A few of them could; not many, very few."

"37. Cross-interrogatory. In dealing with them you would have to employ an interpreter?"

"Answer. In some cases we had to have an interpreter, but that wasn't many."

"38. Cross-interrogatory. Did you read over these contracts to the Indians when they signed them?"

"Answer. Yes, sir."

"39. Cross-interrogatory. And you explained it to them first?"

"Answer. Yes, sir; we were instructed to do that."

"40. Cross-interrogatory. Now, did you afterwards make any contracts with the guardians that you had appointed for the minor children?"

"Answer. I made none, except those contracts as before referred to, in which they were to get one-half; some of those I did; most of the guardians I did."

"41. Cross-interrogatory. Were those contracts approved by the courts that appointed the guardians?"

"Answer. Yes, sir."

"45. Cross-interrogatory. You say all these contracts were approved by the judge of the court where the appointment was made?"

"Answer. Where a guardian was appointed for wards."

"46. Cross-interrogatory. And you are sure that the chancery judge approved these contracts?"

"Answer. Yes, sir; I feel pretty sure of that."

R. 141.

MR. WILLIAMS, on the question of compensation, testified that he knew when Robert L. Owen presented to him the matter of the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation he, Mr. Owen, was an attorney at law, and said:

"I presumed he was not doing his work for nothing. I thought he was going to be paid." R. 542.

On the question of compensation, the Court should bear in mind and take into consideration that the services rendered by Winton, Owen and associates not only resulted in obtaining legislation recognizing the rights of the Mississippi Choctaws to citizenship in the Choctaw Nation but also that laborious services were required and rendered from the time that this "long and somewhat furious contest" started in 1896, until the passage of the Act of July 1, 1902, to prevent legislation harmful and injurious to the Mississippi Choctaws which was earnestly recommended by the Dawes Commission, the officials of the Interior Department, and the Representative of the Choctaw Nation for passage to Congress, the Secretary of the Interior going so far as to close his letter of transmittal with an urgent appeal to Congress that the proposed legislation transmitted be enacted in its present form, making the appeal in language as follows:

"I very earnestly recommend that the agreement be ratified in its present form." H. Doc. 512, 57th Cong., 1st Sess.

And had that proposed legislation been enacted as earnestly recommended by the Secretary of the Interior, all Mississippi Choctaws would have been barred from recognition as citizens of the Choctaw Nation.

When this "long and somewhat furious contest" began in 1896, the Mississippi Choctaws, according to the ruling of the Dawes Commission, later made, however, had no property rights in the Choctaw Nation. Those Indians had no tangible property, and it seemed to be the business of not only the representatives of the Choctaw Nation, but the Dawes Commission and the officials of the Interior Department, charged under the law with protecting the rights of the Indians and conserving their property, to prevent

this class of poor and ignorant Indians from obtaining any rights either to citizenship or property in the Choctaw Nation. The fact that these officials of the Government, charged with the duty of protecting and conserving the rights and property of the Indians, permitted the Mississippi Choctaws to remain in Mississippi unrecognized as citizens of the Choctaw Nation for almost three generations should be considered proof sufficient that those poor and ignorant Indians needed the services of an attorney, and one not connected with any of the Departments of the Government, nor with, or in the employ of, the Choctaw Nation.

MR. WILLIAMS has testified that he told some of the Mississippi Choctaws that they did not need the services of an attorney, yet, almost in the same breath, he admits that he, a man of wide legislative experience and a *practicing Attorney in the State of Mississippi, and in the district where the bulk of these Indians resided*, absolutely knew nothing and was in total ignorance of their rights under the Dancing Rabbit Creek Treaty of September 27, 1830, until—using his language—"Robert L. Owen, an attorney at law," presented the matter to him in an oral argument and at his request prepared and submitted to him a brief on the question.

Which statement of Mr. Williams should be given the most weight by the Court?

The statement that these Indians did not need the services of an attorney, or the statement that he himself was convinced of their treaty rights by an attorney, thereby showing and admitting that these very Indians, *his constituents*, were in dire need of an attorney acquainted with Indian treaties and Indian laws, and he found such an attorney when Robert L. Owen came to him and presented the

claim of the Mississippi Choctaws to citizenship in the Choctaw Nation.

Not only is Mr. Williams on record when testifying that he was in absolute ignorance of the rights of the Mississippi Choctaws to citizenship in the Choctaw Nation, but the Attorney for the Defendants corroborates Mr. Williams' statement by producing and introducing in evidence two letters written by Mr. Williams—the first written February 11, 1896, by Mr. Williams to the Commissioner of Indian Affairs, wherein *he states that he knows nothing about the treaty rights of the Mississippi Choctaws living in his district.* R. 2939.

The Commissioner of Indian Affairs answered Mr. Williams on February 17, 1896, using in part, language as follows:

"I have to say that the lands owned and occupied by the Choctaw and Chickasaw Nations in the Indian Territory are secured by treaty to said nations in proportion of three-fourths to the former and one-fourth to the latter. No person not a recognized citizen of the Choctaw Nation would be entitled to receive any benefits from the common property of that nation.

"I deem it expedient to add that applicants for admission to citizenship in the Choctaw Nation cannot be recognized as having any rights in that nation until they shall have been lawfully admitted to such citizenship; and, further, should they enter the nation for the purpose of locating there and make improvements therein they would do so at their own risk and be liable, upon complaint, to removal as intruders in the Indian country." R. 2940.

The second letter of Mr. Williams was addressed to the Commissioner of Indian Affairs under date of November 10, 1896, wherein he refers to the fact that there seems

to have been an idea gone out among the Indians that they were entitled to allotments of land and patents in the Choctaw Nation, and then he says:

"I remember no law of either old or recent passage justifying the notion. Please write me authoritatively on the subject." R. 2948-a.

The Commissioner replied to Mr. Williams under date of November 14, 1896, and advised him that Congress on June 10, 1896, passed an act authorizing the Dawes Commission to hear and determine applications of all persons applying for citizenship in any of the Five Civilized Tribes, and after such hearing, to determine the right of such applicant to be admitted to citizenship and enrolled. The applications were to be filed within three months after the passage of the act, 29 Stat. L., 339. The three months expired on September 10, 1896—*more than two months before the date of Mr. Williams' letter of inquiry.*

No encouragement whatever did the Indian Commissioner give Mr. Williams and certainly no information of value to the Mississippi Choctaws. He suggests in his first letter the arrest and removal, as intruders, of Mississippi Choctaws daring to locate in the Choctaw country before being identified, and in his second letter, that the time had expired when they might apply to the Dawes Commission.

From this it will be seen that Mr. Williams was informed by the Commission that the gates were closed to all Mississippi Choctaws, and securely locked when the Dawes Commission rejected the Jack Amos case.

About this time, or shortly thereafter—that is, either in 1896 or early in 1897—according to the evidence of Mr. Williams, R. 548, Mr. Owen presented this matter to Mr. Williams and, as Mr. Williams says—convinced him, by

oral and written argument, that the Mississippi Choctaws did have rights to citizenship in the Choctaw Nation under the Treaty of 1830.

The next letter after the *conversion* of Mr. Williams to the rights of the Mississippi Choctaws, found in the Record, is dated May 31, 1898, and addressed to the Secretary of the Interior. R. 2940-2. This last letter of Mr. Williams shows that someone had informed him as to the rights of the Mississippi Choctaws, and a reading of that letter should, and it is believed, will, convince the Court that he used the same argument therein which Mr. Owen not only used with Mr. Williams, but to Congress, put in the shape of memorials, and oral arguments before Committees and Members of Congress in the performance of his duty as attorney for the Mississippi Choctaws.

But the Congressional Record shows that much more was done by others than by Mr. Williams, as Senators Walthall, Money, Jones, Stewart, Harris and Platt, and Congressmen Allen, Curtis, Sherman, Stephens, McRae, Little and others whose interests and activities in behalf of the Mississippi Choctaws were induced and obtained by Owen and Winton to introduce bills, resolutions and memorials prepared by Owen, who supported Owen's contentions in behalf of the Mississippi Choctaws, and helped create the sentiment in Congress that resulted in their final recognition, giving them rights to citizenship in the Choctaw Nation.

There is no doubt but that Mr. Williams, along the line of his duty as a Member of Congress when called on by Owen, favored and served the Mississippi Choctaws, but even as to Mr. Williams **everything Mr. Williams did in their behalf should be credited to Mr. Owen**, for, as Mr. Williams said—had it not been for Mr. Owen, he probably never would have set about it, meaning the

matter of giving his attention to having Congress recognize the rights of the Mississippi Choctaws to citizenship in the Choctaw Nation, and it must be borne in mind that this statement was made by Mr. Williams in April, 1909, after all the legislation in question had been enacted and he at that time, looking backward over this "long and somewhat furious contest," was in a position to know that no one except Mr. Owen ever presented the Mississippi Choctaw matter to him.

FINDING 33.

THE ESTATE OF CHESTER HOWE.

Amend finding thirty-three by striking therefrom the 5th paragraph, and insert in lieu thereof a paragraph as follows:

Between the months of December, 1900, and July, 1902, the said Howe was actively engaged in presenting claims of Choctaws resident in Indian Territory, and mixed-blood Indians, claiming as Mississippi Choctaws, for allottable shares of lands and moneys of the Choctaw Nation before the Interior Department, which had been rejected by the Dawes Commission. R. 1634, 1635, 1718, 1719, 1721, 1722.

In framing the findings of fact the Court in many instances gave great weight to the evidence of Mr. Williams, but in this particular instance the Court seems to have ignored what Mr. Williams said with reference to Mr. Howe, to wit, that during the period of time covered in obtaining the legislation for the relief of the Mississippi Choctaws, he never heard tell of Chester Howe. R. 552-6.

It is respectfully submitted that the facts stated by the Court in this fifth paragraph, where there is made the broad general statement that Mr. Howe "was actively en-

gaged during all of this period in pressing the claims of the Mississippi Choctaws, is not in accordance with the record, but that the record does establish the fact that Mr. Howe during that time was actively engaged in presenting the claims of alleged individual Mississippi Choctaws to the Interior Department for allotment and that his activity in behalf of such alleged Mississippi Choctaws before Congress or the committees of Congress, consisted in only appearing once in the interest of such Mississippi Choctaws before the House Committee on Indian Affairs in 1902. If, as stated in this paragraph, which describes the services of Howe more fully and to a greater extent than any finding of the Court describes the services of Owen and Winton, why is it that there appears no public record bearing the name of Chester Howe as speaking in memorials for, or being heard in behalf of, the Mississippi Choctaws as a group? So far as the records of the House Committee on Indian Affairs shows, Owen is the only man there named as having been heard in June, 1902, for the Mississippi Choctaws, when the bill which later became the Act of July 1, 1902, was being considered.

The only memorials or petitions presented to Congress, setting forth argument in favor of the rights of the Mississippi Choctaws, bear the names of Winton and Owen, and not one Government document has been produced bearing the name of Chester Howe, nor anyone else, except Owen and Winton and their associates.

FINDING 43. SULLIVAN AND NEILL.

Amend finding forty-three by striking therefrom all of the first paragraph after the word "claimants" in the fourth line, for the reason that the consideration which Winton

was to pay Sullivan and Neill is not established by the record. Winton being dead, the evidence of Sullivan and Neill cannot be used to establish a verbal contract between them and Winton, and it is here insisted that the written contract does not bear the genuine signature of Winton, as a comparison of that signature with the letters admittedly bearing the genuine signature of Winton will show. See Ex. A, Dep. Sullivan, p. 99; Ex. 3, Dep. R. L. O., filed February 24, 1913, containing three letters bearing the genuine signature of C. F. Winton.

In this connection the Court's attention is invited to the fact that neither jurisdictional act provides for the bringing of a suit by Sullivan and Neill against Winton, and the findings of fact should not be encumbered with personal claims against Winton, even if they were proven and just. If Sullivan and Neill have claims against Winton or against Winton's estate, their remedy would be by suit in a court other than the Court of Claims, and Winton's defence in that court against such a suit should not be prejudiced by a finding of fact made by this court in the present proceeding, where no such claim or suit against Winton or no defence thereto is provided for under the jurisdictional acts.

An examination of the Exhibit No. 4 will show, on pages 42-7, an account between Winton and Sullivan. The heading of said account is as follows:

"EXPENSE ACCOUNT OF CHARLES F. WINTON TO THOMAS B. SULLIVAN, NOT PAID. CARTHAGE, MISS., APRIL, 1901.
CHARLES F. WINTON IN ACCOUNT WITH THOMAS B. SULLIVAN.

Charles F. Winton, Debtor, to Filing Petitions of Guardianship, Securing Letters of Administration, Orders from Chancery Court, and other Legal Mat-

ters in the Chancery Court of Leake County, State of Mississippi, During the years 1901, 1902, 1903, Guardian Bond, etc.

Dr.

No. 1491. Petition in Chancery Court for Lucy John for Letters of Administration and Court Orders, May 24 and 27, 1901.....\$100."

This item certainly shows a personal charge against Winton for \$100 for the services rendered as above stated, and it will be noted that the account, according to its title, covers the years 1901, 1902 and 1903. The alleged contract which the Court sets out in the third paragraph of this finding, *bears the date of May 6, 1901.*

If Winton had entered into a contract with Thomas B. Sullivan and J. H. Neill whereby he agreed to give one-fourth part of his interest in the Mississippi Choctaw cases as a consideration for the services Sullivan and Neill were to render him, why does the account book of Sullivan and Neill contain the above charge—and many similar charges—against Winton for legal services, the very services mentioned in the alleged contract of May 6, 1901?

This account between Sullivan and Neill and Winton contains thirty-eight charges of one hundred dollars each, totalling \$3,800. The first service rendered, according to this account, is under date of May 27, 1901, and shows that services were rendered at various times from that date to October 2, 1901.

The book, Exhibit B, to the deposition of Thomas B. Sullivan, sets forth the expenses incurred by Mr. Sullivan in performing services or making trips for Winton during the years 1897 to 1903, containing many charges aggregating \$733.50, as shown on page 31 of said book.

On page 37 of said book is a note as follows:

"List of Mississippi Choctaws which Thomas B. Sullivan and J. H. Neill assisted Charles F. Winton in getting to the Indian Territory."

The list contains *three hundred and eighty-one names*, and purports to show that these Indians were moved from Carthage and twenty other different sections of Mississippi. The evidence in the case shows that Sullivan and Neill moved not more than twenty-two Indians as stated in the fifth paragraph of the forty-third finding.

If this record is wrong in stating that Sullivan and Neill assisted Winton in moving the three hundred and eighty-one Indians, it is a false record, and was known to be false when it was made, and if either Mr. Sullivan or Mr. Neill will make a false record showing that they assisted Winton in the removal of three hundred and eighty-one Indians, it is fair to assume that the contract offered by them as the contract between themselves and Winton bears not the genuine signature of Winton, but the false, forged signature of Winton. And when the signature of Winton to said contract does not compare favorably with the genuine signature of Winton the evidence is not sufficient to prove said contract.

Winton is dead, and this alleged contract between him and Sullivan and Neill did not make its appearance in this case until some time after his death. The testimony of Sullivan and Neill as to whether or not this alleged contract bears the genuine signature of Winton is incompetent for the reason that neither of them is competent to testify as to the genuineness of this signature, they both being parties and beneficiaries of the contract in question. No one else has testified to the genuineness of the Winton signature. The contract was shown to Mr. Owen when testifying, and he absolutely refused to testify that it bore the

genuine signature of Winton and submitted three letters bearing the signature of Winton, in order that the Court might compare the signatures on those letters, with the signature on the alleged contract. R. 2532, Q. 14, 2541-51, 2604-5, 2607, 2623.

If, in the opinion of the Court, after comparing the signatures, the contract in question does not bear the genuine signature of Winton, then the amendment here proposed to finding forty-three should be adopted, and the Court should *further amend this same finding* by striking out all of the third and fourth paragraphs thereof, which pertain to the contract in question.

Further amend finding forty-three by striking out paragraphs 3 and 4 which relate to the alleged Sullivan and Neill-Winton contract, for the reasons immediately hereinbefore stated.

When claimants' said Motion of August 9, 1915, a part of which is hereinbefore set out, was argued before the Court of Claims in February, 1916, the appellants as claimants below presented and submitted to the Court in printed form "The findings of fact made by the Court on May 17, 1915, as changed by the plaintiffs' Motion to amend," which shows very clearly the amendments requested by said Motion and at their proper place in the findings of fact with citations to that part of the record where said Motion to amend contains the requests for the various amendments. The amendments proposing additions or insertions to the Court's findings of fact are printed in black letters. The said findings of fact of May 17, 1915, as changed by said Motion to amend and presented to the Court at the last trial of the case are as follows:

In the Court of Claims

ESTATE OF CHARLES F. WINTON, et al.

Plaintiffs

vs.

THE MISSISSIPPI CHOCTAWS AND THE
UNITED STATES

No. 29,821

THE FINDINGS OF FACT MADE BY THE COURT ON MAY 17, 1915, AS CHANGED BY THE PLAINTIFFS' MOTION TO AMEND.

(NOTE.—The findings as made by the Court are printed in long primer.

The plaintiffs' amendments proposing insertions are printed in **black letter**.

Where plaintiffs' proposed amendment omits any part of said findings such omission is indicated by two stars, the number of the page and ¶ of said findings where the part omitted can be found followed by two stars, and cites the page of said motion pertaining to such omission, i.e.,

* * * p. 3, ¶ 2 * * * Vol. 11, p. 74, indicates that plaintiffs' said motion to amend strikes out the second paragraph on page 3 of said findings (paragraph 4 of Finding 4), and is referred to on page 74 of plaintiffs' said motion to amend.

Volume 11, referred to herein, has reference to the last volume of the record made up commencing with the findings of May 17, 1915, and followed by all printed motions and briefs filed since that date.)

I.

The jurisdictional act under which this suit is brought was approved on April 26, 1906, *34 Stat., 140*, and provides:

"That the Court of Claims is hereby authorized and directed to hear, consider, and adjudicate the claims against the Mississippi Choctaws of the estate of Charles F. Winston, deceased, his associates and assigns, for services rendered and expenses incurred in the matter of the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation, and to render judgment thereon on the principle of *quantum meruit* in such amount or amounts as may appear equitable or justly due therefor, which judgment, if any, shall be paid from funds now or hereafter due such Choctaws by the United States. Notice of such suit shall be served on the governor of the Choctaw Nation, and the Attorney General shall appear and defend the said suit on behalf of said Choctaws."

II.

The jurisdictional act was amended by an act approved May 29, 1908, *35 Stat., 457*, which provides:

"That the Court of Claims is hereby authorized and directed to hear, consider, and adjudicate the claims against the Mississippi Choctaws of William N. Vernon, J. S. Bounds, and Chester Howe, their associates or assigns, for services rendered and expenses incurred in the matter of the claims of the Mississippi Choctaws to citizenship in the Choctaw Nation, and to render judgment thereon on the principle of *quantum meruit* in such amount or amounts as may appear equitable and justly due therefor, which judgment, if any, shall be paid from funds now or hereafter due such Choctaws as individuals by the United

States. The said William N. Vernon, J. S. Bounds and Chester Howe are hereby authorized to intervene in the suit instituted in said court under the provisions of section nine of the act of April twenty-sixth, nineteen hundred and six, in behalf of the estate of Charles F. Winton, deceased: *Provided*, That the evidence of the interveners shall be immediately submitted: *And provided further*, That the lands allotted to the said Mississippi Choctaws are hereby declared subject to a lien to the extent of the claims of the said Winton and of the other plaintiffs authorized by Congress to sue the said defendants, subject to the final judgment of the Court of Claims in the said case. Notice of such suit or intervention shall be served on the governor of the Choctaw Nation, and the Attorney General shall appear and defend the said suit on behalf of the said Choctaws."

III.

The associates of Charles F. Winton, now deceased, are Robert L. Owen; James K. Jones, now deceased; Walter S. Logan, now deceased; Preston C. West; Frank B. Crosthwaite, and John Boyd.

Later, and before the filing of the petition herein, James K. Jones became, by assignment, an associate of the said Charles F. Winton, deceased. At the time of his death and for many years prior thereto Charles F. Winton was a citizen of the State of Oklahoma. Robert L. Owen and Preston C. West are and have been for many years citizens of the State of Oklahoma. At the time of his death and for many years prior thereto Walter S. Logan was a citizen of the State of New York. Frank B. Crosthwaite and John Boyd are and have been for many years citizens of the District of Columbia.

IV.

The treaty of Dancing Rabbit Creek was entered into between the United States and the Choctaw Nation on September 27, 1830 (7 *Stat.*, 333; Miss. Code, 1848, pp. 121-128), by article 3, of which the Choctaws ceded all of their lands east of the Mississippi River and **except as provided in Article 14** (*See Vol. 11, p. 73, Finding 4*) agreed to remove west of that stream during the years 1831, 1832 and 1833.

Article 14 provided that—

"Each Choctaw head of a family being desirous to remain and become a citizen of the States should be permitted to do so by signifying his intention to the agent within six months from the ratification of this treaty, and he or she shall thereupon be entitled to a reservation of one section of 640 acres of land, to be bounded by sectional lines of survey; in like manner shall be entitled to one-half that quantity for each unmarried child which is living with him over 10 years of age; and a quarter section to such child as may be under ten years of age, to adjoin the location of the parent. If they reside upon said lands intending to become citizens of the States for five years after the ratification of this treaty, in that case a grant in fee simple shall issue; said reservation shall include the present improvement of the head of the family, or a portion of it. Persons who claim under this article shall not lose the privilege of a Choctaw citizen, but if they ever remove they are not to be entitled to any portion of the Choctaw annuity."

By article 19 reservations of from two to four sections of land each were provided for a limited number of prominent members of the Choctaw Nation by name, and to each head of the family, not exceeding 1,600, a reservation proportionate in size to his improvements and the number

of acres he had in cultivation. Captains of the tribe, not exceeding 90, were given one section of land each, and the orphans of the tribe one-half of a section each.

(* * P. 3, *Finding 4*, ¶ 2, * * Vol. 11, p. 74.)

During the pendency of the negotiations between the United States and the Choctaw Nation for the "Dancing Rabbit Creek treaty" the Legislature of the State of Mississippi, where the Choctaws were living on January 19, 1830, passed an act abolishing tribal customs of Indians not recognized by the common law or the law of the State, making them citizens of the State, with the same rights, immunities, and privileges as free white persons; extending over them the laws of the State; validating tribal marriages; and abolishing the offices of chief, mingo, headman or other post of power established by tribal statutes, ordinances, or customs under penalty of \$1,000 fine and imprisonment not exceeding 12 months. *Miss. Rev. Stats.*, 1840; *Code of Miss.*, 1848.

The act of the legislature of January 19, 1830, was ratified by the constitution of 1832 (art. 7, sec. 18), and re-enacted in the general laws of 1840 and the code of 1848.

The constitution of Mississippi of 1868, however, abolished all distinctions of race, color, or previous status of its inhabitants. By section 2 of article 1, it declared that "all persons resident in this State, citizens of the United States, are hereby declared citizens of the State of Mississippi;" and by section 2 of the same article it declared that "no person shall be deprived of life, liberty, or property except by due process of law."

The Mississippi Choctaws who removed to the Choctaw Nation (* * p. 3, *Finding 4*, ¶ 8, * * Vol. 11, p. 76) became citizens of Indian Territory by virtue of section 6 of the act of February 8, 1827, 24 *Stat.*, 390, which act was amended by the act of March 3, 1901, 31

Stat., 1447, declaring every Indian in Indian Territory to be a citizen of the United States.

After the Indian Territory was admitted on November 16, 1907, into the Union as a part of the State of Oklahoma the Mississippi Choctaws became, in common with other Indians residing in the State, citizens thereof; with all the rights, privileges, immunities, and franchises of such citizens. Sec. 1, art. 3, constitution of Oklahoma.

The enabling act of June 6, 1906, 34 *Stat.*, 267, providing for the admission of Oklahoma into the Union, contained certain reservations by the Government relative to Indians and their property.

On April 26, 1906, Congress extended certain restrictions upon the power of alienation and encumbrance by full-blood Choctaws in Oklahoma. 34 *Stat.*, 144.

V.

(There is no Finding "V" in the findings of May 17, 1915. Finding "V" of the tentative findings of December 7, 1914, commence with the fifth paragraph (p. 3) of Finding 4.)

VI.

The Choctaws who remained in Mississippi under article 14 of the treaty of 1830 adopted the dress, habits, customs, and manner of life of the white citizens of that State. They had no tribal organization or laws of their own, like those of the Indians in the Indian Territory, but were subject to the laws of the State of Mississippi, and no funds were ever appropriated by the Government for their support, though a great deal of land was given to those who remained. Said Choctaws did not live upon any reservation, nor did the Government exercise any supervision or control over them. Neither the Indian Office nor the Department of

the Interior assumed or exercised any jurisdiction over them, and never recognized them either individually or as bands, but regarded them as citizens of the State of Mississippi, and the department held that it had no authority to approve any contracts made with him.

VII.

On December 24, 1889, the Choctaw Nation, through its national legislature, memorialized Congress to provide for the removal of large numbers of Choctaws in the State of Mississippi and Louisiana who were entitled to all of the rights and privileges of citizens in the Choctaw Nation, and to make provision for the emigration of said Choctaws from said State to the Choctaw Nation. In 1891 a commission was provided for and funds appropriated by the Choctaw Council for the removal and subsistence of Mississippi Choctaws to the Choctaw Nation, and during the same year 181 were removed and admitted to citizenship in the nation.

VIII.

By the act of March 3, 1893, *27 Stat., 645*, Congress created the Commission to the Five Civilized Tribes, familiarly known as the "Dawes Commission," for the purpose of procuring, through negotiation, the extinguishment of the national or tribal title to the lands of the Five Civilized Tribes living in the Indian Territory and their cession to the United States for allotment in severalty among the members thereof.

By the act of June 10, 1896, *29 Stat., 321*, Congress directed the Dawes Commission to make a roll of the Five Civilized Tribes, and provided that applicants for enrollment should file their applications with the com-

mission within three months from the passage of the act, with right of appeal to the United States courts.

IX.

Thereafter, on June 23, 1896, Robert L. Owen entered into an agreement with Charles F. Winton to proceed to Mississippi and secure contracts with such Indians there resident as might be entitled to participate in any distribution of the lands or moneys of the Choctaw or Chickasaw Nations, Winton binding himself to secure the evidence, powers of attorney, and contracts as prescribed by said Robert L. Owen, said Owen to provide the funds and represent the claims of these people (Mississippi Choctaws) before the proper officers of the United States or Indian Governments, and in which representation the said Winton was to assist and co-operate with the said Owen (*R. 320-321, Ex. 11; Vol. 11, pp. 77-8*) and Winton to receive one-half of the net proceeds of the contracts. This agreement was modified July 23, 1896, by a second contract between the same parties, in which it was provided that Winton should act as attorney in Mississippi Choctaw cases under his agreement with Owen; that said Owen should have a one-half interest in all of said contracts; and in the event of accident to Winton that Owen should have full authority to take up all Mississippi cases in place of Winton.

X.

Immediately thereafter Winton proceeded to Mississippi, and during the year 1896 and the years immediately following procured approximately 1,000 contracts with full-blood Mississippi Choctaws (* * *p. 5, Finding 10, ¶ 1. * * Vol. 11, p. 78*). Under the terms of these

contracts said Winton and Owen agreed to use their best efforts to secure the rights of citizenship for said Mississippi Choctaws, as members of the Choctaw Nation, in the lands and funds of said tribe, for a fee of one-half of the net interest of each allottee in any allotment thereafter secured. These contracts were subsequently abandoned by said Owen and Winton, because void and non-enforceable under the acts of June 28, 1898, and May 31, 1900, as hereinafter more fully stated.

Sample copies of all contracts are set forth in an appendix to these findings.

XI.

At the time of the making of these said contracts by Winton and Owen the Mississippi Choctaws, full blood, were extremely poor, living in insanitary conditions and working at manual labor for daily wages. Their children could not attend schools provided for the whites, and they were denied all social and political privileges.

Early in 1896 said Owen **presented an oral argument and written brief, the latter in accordance with the request of Mr. Williams** (R. 335-6, Question 3, R. 542, Question 19, R. 548, Question 9, R. 552-3, letter of Mr. Williams to Mr. Wright, dated April 12, 1909, R. 554-5; letter of Mr. Williams to Mr. Thompson, dated April 12, 1909 (* * *p. 5, Finding 11, ¶ 3.* * * *Vol. 11, pp. 78-9*), to Hon. John Sharp Williams, then a Representative in Congress from the Fifth Congressional District of Mississippi, wherein practically all full-blood Choctaws in Mississippi then resided, with reference to the possible rights of Mississippi Choctaws to participate in the partition of lands of the Choctaw Nation in Oklahoma, at that time also submitting to Mr. Williams a copy of the Dancing Rabbit Creek treaty and calling his attention to article 14

thereof. This was the first time that said matter had been called to the attention of Mr. Williams.

(* * *P. 5, Finding 11, ¶ 3. * * Vol. 11, pp. 79-80.*)

At the time of the making of these contracts by Winton and Owen, the Mississippi Choctaws, full bloods, were extremely poor, living in insanitary conditions, and working at manual labor for daily wages. Their children could not attend schools provided for the whites, and they were denied all social and political privileges. In the year 1896 said Owen approached Hon. John Sharp Williams, then a Representative in Congress from the Fifth Congressional District of Mississippi, wherein practically all full-blood Choctaws in Mississippi then resided, and as the result of statements made and documents and arguments submitted by him (the said Owen) said Owen convinced said Representative Williams of the rights of said Mississippi Choctaws to share the privileges of Choctaw citizens in the Choctaw Nation. (*Vol. 11, pp. 79-80.*)

Thereupon, on February 11, 1896, Mr. Williams wrote a letter to the Commissioner of Indian Affairs, stating that a great many Choctaws were living in his district, and made inquiry as to whether they would come in for anything under an act then pending to divide the Choctaw lands in severalty. On November 10, 1896, Mr. Williams wrote another letter to the Commissioner asking information as to the rights of Choctaws who had remained in Mississippi after the tribe had removed, stating that he had no information on the subject himself, and the Commissioner of Indian Affairs referred him to the Commissioner of the Five Civilized Tribes.

Thereafter and until March 3, 1903, when his country was placed in another congressional district, Representative Williams was consulted by the chairman, or member

in charge of pending bills, upon all legislation concerning the Mississippi Choctaws.

XII.

In December, 1896, Charles F. Winton presented a memorial to Congress on behalf of the (* * p. 6, *Finding 12*, ¶ 1. * * Vol. 11, pp. 80-4, 91-94) Mississippi Choctaws, asking that they be enrolled and permitted to share the privileges of Choctaw citizenship in the Choctaw Nation. Again, in January, 1897, a second memorial on behalf of the (* * p. 6; *Finding 12*, ¶ 1, * * Vol. 11, pp. 80-84, 91-94) Mississippi Choctaws was presented through Winton, seeking to accomplish the same purpose.

In September, 1897, the said Winton presented a third memorial of the same purport.

In the said memorial on behalf of the Mississippi Choctaws it was, among other things, insisted that the Mississippi Choctaws for a valuable consideration had bought and paid for two things to be enjoyed jointly and coincidentally, namely, the right of residence in Mississippi, with the further right of not losing the right of a Choctaw citizen by such residence in Mississippi, and that such residence should never be construed as depriving them of such right thus established by said treaty, and that such right could not be taken from them without their consent.

XIII.

Prior to the presentation of the memorial first above named, said Owen, in September or October, 1896, appeared before the Commission to the Five Civilized Tribes in behalf of the defendant Jack Amos, and 97 other full-blood Choctaws residing in Mississippi, and attempted to secure their enrollment under the act of June 10, 1896,

which authorized said commission to enroll Indians residing in the Indian Territory who filed their applications within three months from the date of the passage of that act, with right of appeal to the United States District Courts of the Territory. The commission refused to enroll said Amos and said other Choctaws on the ground that they were not resident in Indian Territory; whereupon an appeal was taken by said Owen to the United States Court for the Central District of Indian Territory, where the ruling of the commission was subsequently affirmed.

This latter decision was later indirectly affirmed by the Supreme Court on May 15, 1899, in the case of *Stephens vs. The Cherokee Nation*, 174 U. S., 445, which held the legislation under which the judgment was rendered constitutional and that the court was without jurisdiction to review the decisions of the courts of Indian Territory in refusing to enroll applicants for citizenship in the Five Civilized Tribes.

The litigation of the Amos case before the Dawes Commission and the Territorial court was instituted and maintained by said Winton and associates, and a brief was filed by them in behalf of the Mississippi Choctaws under the title of *Emma Nabors et al. vs. The Choctaw Nation* before the Supreme Court of the United States.

XIV.

At the same time the opinion was rendered in the case of *Jack Amos et al. vs. The Choctaw Nation*, as stated in the foregoing finding, the same Territorial court delivered an opinion in the case of *E. J. Horne vs. The Choctaw Nation*. In the latter case the claimant was a Mississippi Choctaw who, prior to the date of his application to be enrolled, had removed to the Choctaw Nation. It was

held that the claimant was entitled to be enrolled by reason of the provisions of article 14 of the treaty of 1830, regardless of his degree of Indian blood, having proved his descent from an ancestor who had complied with the provisions of the treaty. Incidentally it was also held that the act of the Choctaw Council of November 5, 1886, restricting the qualifications for Choctaw citizenship, was invalid because in conflict with the provisions of the treaty conferring the right.

XV.

On February 11, 1897, a resolution, which had been drawn by said Owen, was passed by the Senate directing the Secretary of the Interior to transmit the following information:

"First, A copy of the memorial of the Choctaw Nation of December 24, 1889, relative to the Mississippi Choctaws.

"Second, Deposition of Greenwood Leflore, ex-chief of the Choctaw Nation, of February 24, 1843, before United States Commissioners Claiborne and Graves, relative to importance of the fourteenth article of the treaty of 1830.

"Third, Whether or not the Choctaws entitled to remain in Mississippi by the fourteenth article were reported by United States Commissioners Murray and Vroom to the President of the United States on July 31, 1838, as having been in a great number of cases forced to remove from the reservations granted them by the fourteenth article.

"Fourth, Whether or not the Mississippi Choctaws were parties to any subsequent Choctaw treaty or have ever executed a relinquishment of their rights of Choctaw citizenship."

The Commissioner of Indian Affairs, in his reply to this resolution, February 15, 1897, transmitted, through the Secretary of the Interior, a copy of the memorial of the

Choctaw Nation of December 24, 1889, to Congress; a copy of the deposition of Greenwood Leflore, taken on February 24, 1843, before United States Commissioners Claiborne and Graves; and an extract from the report of United States Commissioners Murray and Vroom to the President, dated July 31, 1838, stating that the last two papers called for were copied from the printed record of the Court of Claims in Case No. 12742, entitled the *Choctaw Nation vs. The United States*. The Commissioner answered the last inquiry of the resolution by stating that he had not found any provision in the Choctaw treaties of 1837, 1854, 1855, or 1866 by which the Choctaws in Mississippi had relinquished any rights of Choctaw citizenship that they may have acquired under the fourteenth article of the treaty of 1830 or otherwise.

About this time the said Owen made an argument before the Committee on Indian Affairs of the House of Representatives, when considering House Bill 10372, which resulted in a favorable report being made by said Committee on said Bill, which recognized the rights of the Mississippi Choctaws to citizenship in the Choctaw Nation, and which Report had been drawn and submitted by Mr. Owen. (*Ex. 1, R. L. O. 90. Said favorable Report is known as H. R. Rep. 3080, 54th Cong., 2d Sess., R. 2923, Vol. 11, p. 84.*)

XVI.

The Indian appropriation act of June 7, 1897, contained the following item:

"That the commission appointed to negotiate with the Five Civilized Tribes in the Indian Territory shall examine and report to Congress whether the Mississippi Choctaws under their treaties are not entitled to all the rights of Choctaw citizenship, except interest in the Choctaw annuities."

(* * *P. 8, Finding 16, ¶ 2; * * Vol. 11, p. 84.*)

The above provision, 30 Stat., p. 83, was inserted in said Indian Appropriation Act, in the Senate as the result of an effort made by Owen and Winton to have enacted a provision more favorable to the Mississippi Choctaws. (*R. 293; Vol. 11, pp. 85-91.*)

XVII.

Following upon the direction contained in said act last named said Owen appeared before the Dawes Commission in the interest (* * *p. 8, Finding 17, ¶ 1; * * Vol. 11, pp. 80-84 and 91-94*) of the Mississippi Choctaws.

On January 28, 1898, said commission made a report to Congress, as required by the act of June 7, 1897 (Rept. of Com., 1898, p. 15), in which, after referring to the decision of the commission requiring removal by Mississippi Choctaws before they could acquire rights to allotments of Choctaw lands, and the affirmance of its decision by the citizenship court in the Jack Amos case, it was said:

"If, in accordance with this conclusion of the commission, these Mississippi Choctaws have the right at any time to remove to the Indian Territory, and joining their brethren there, claim participation in all the privileges of a Choctaw citizen, save participation in their annuities; still, if any person presents himself, claiming this right, he must be required by some tribunal to prove the fact that he is a descendant of some one of those Indians who originally availed themselves of and conformed to the requirements of the fourteenth article of the treaty of 1830. The time for making application to this commission to be enrolled as a Choctaw citizen has expired. It would be necessary, therefore, to extend by law the time for persons claiming this right to make application and be heard by this commission or to create a new tribunal for that purpose."

The commission concluded by recommending that the question should be referred by Congress to the Court of Claims.

XVIII.

On June 28, 1898, Congress passed an act commonly known as the "Curtis Act," section 21 of which provided for the making of the rolls of the Five Civilized Tribes by the Dawes Commission, and further provided, among other things, that—

"Said commission shall have authority to determine the identity of Choctaw Indians claiming rights in the Choctaw lands under article fourteen of the treaty between the United States and the Choctaw Nation concluded September twenty-seventh, eighteen hundred and thirty, and to that end may administer oaths, examine witnesses, and perform all other acts necessary thereto and make report to the Secretary of the Interior.

* * * * *

"No persons shall be enrolled who has not heretofore removed to and in good faith settled in the nation in which he claims citizenship: *Provided, however,* That nothing contained in this act shall be so construed as to militate against any rights or privileges which the Mississippi Choctaws may have under the laws of or treaties with the United States."

(* * P. 9, *Finding 18, last paragraph*; * * Vol. 11, pp. 94-96.)

XIX.

Under date of July 1, 1898, said Owen prepared a general circular for Winton addressed to the Mississippi Choctaws, notifying them of the requirements of the Curtis Act

relative to Mississippi Choctaws and advising said Choctaws of the manner in which they must be identified.

December 2, 1898, the Dawes Commission, by printed circular notice and handbills, sent through the mails and posted in conspicuous places throughout the neighborhood in which the Choctaws in Mississippi resided, **officially notifying the** (* * *p. 9, Finding 19, ¶ 2; * Vol. II, p. 97*) Choctaws of the time and places at which the commission would hear applications for identification under the Curtis Act, and explained in detail the steps necessary to procure identification thereunder.

XX.

Thereafter, in January, 1899, the Dawes Commission, through one of the commissioners, A. S. McKennon, proceeded to Mississippi, with several clerks and stenographers, and there identified and made up a schedule of 1,923 persons as being Mississippi Choctaws entitled to citizenship in the Choctaw Nation under the fourteenth article of said treaty. There were, according to the estimate of the commission, not more than 2,500 descendants of the Choctaws who remained under article 14 of the treaty of September 27, 1830, then living in Mississippi. The principle adopted in making this schedule was that proof of the fact that a claimant was a full-blood Indian, whose ancestors were living in Mississippi at the date of the treaty, was sufficient evidence to report his name as a Mississippi Choctaw under section 21 of the Curtis Act. This schedule, thereafter commonly known as the "McKennon roll," was subsequently approved by said commission, who forwarded the same with a report dated March 10, 1899, to the Secretary of the Interior. Said Schedule was (* * *p. 9, Finding 20, ¶ 1; * * Vol. II, p. 97*) formally disapproved by the Secretary March 1, 1907.

(* * P. 10, Finding 20, ¶ 2, 3, 4 and 5; * * Vol. 11, 98-115.)

After the circular of July 1, 1898, set out in finding nineteen, was sent to the Mississippi Choctaws, Winton and associates co-operated with the Dawes Commission in obtaining a rapid identification of the Mississippi Choctaws by Winton going personally into the various counties where the Mississippi Choctaws lived and sending runners throughout the country urging the Mississippi Choctaws to appear before the Dawes Commission for identification. *Rec. 249, 309, 311. (Ex. 3, R. L. O., Dep. Rec. 522-4, Finding 43, p. 29, paragraph 2, Vol. 11, p. 99.)*

Plaintiff Owen prepared at considerable expense and furnished the Dawes Commission with an alphabetical index containing the names of sixteen thousand Choctaws which Commissioner McKennon testified was of great value to the Commission in identifying the Mississippi Choctaws. A duplicate copy of this alphabetical index has been by Owen filed in this case. (*Ex. 2, R. L. O., Dep. Rec. 294, 402, Vol. 11, p. 99.*)

XXI.

Shortly after transmitting the McKennon roll to the Secretary of the Interior as aforesaid, the Dawes Commission discovered that said roll was very inaccurate, containing many names that should have been omitted and omitting the names of many Indians who should have been identified. Because of these facts another party was organized and sent out by the Dawes Commission for the purpose of making a more accurate and complete roll of the Mississippi Choctaws under the act of 1898. Hearings were commenced at Hattiesburg, Miss., in December, 1900, and were resumed at Meridian, Miss., April 1, 1901, from which time continuous sessions were held at Meridian and other

places in Mississippi until the latter part of August of that year.

XXII.

February 7, 1900, said Winton and associates presented a memorial to Congress, praying that the treaty rights of the Mississippi Choctaws be so construed as to afford them the rights of Choctaw citizens without removal, or that they be permitted to have those rights determined in the courts. No action was taken by Congress upon this request.

XXIII.

April 4, 1900, said Winton and his associates memorialized Congress (Owen, Ex. 1, p. 202), requesting the following amendment to the Indian appropriation act then pending:

"Provided, That any Mississippi Choctaw duly identified and enrolled as such by the United States Commission to the Five Civilized Tribes shall have the right, at any time prior to the approval of the final rolls of the Mississippi Choctaws by the Secretary of the Interior, to make settlement within the Choctaw-Chickasaw country, and on proof of the fact of bona fide settlement they shall be enrolled by the Secretary of the Interior as Choctaws entitled to allotment."

The Indian appropriation act of May 31, 1900, contains the following provisos:

"Provided, That any Mississippi Choctaw duly identified as such by the United States Commission to the Five Civilized Tribes shall have the right, at any time prior to the approval of the final rolls of the Choctaws and Chickasaws by the Secretary of the Interior, to make settlement within the Choctaw and Chickasaw country, and on proof of the

fact of bona fide settlement may be enrolled by such United States commission and by the Secretary of the Interior as Choctaws entitled to allotment.

"Provided further, That all contracts or agreements looking to the sale of encumbrance in any way of the lands to be allotted to said Mississippi Choctaws shall be null and void."

The last proviso was prepared by Mr. Williams and its passage secured by him, with assistance and co-operation of Senator Platt, they having been informed that a number of lawyers and other persons were securing contracts with the Mississippi Choctaws looking to the payment to them of certain shares of the prospective allotments to the Indians.

XXIV.

The Dawes Commission construed the provisions of the act of May 31, 1900, as prospective in its operation, and thereafter required from all applicants for enrollment proof of ancestry from Choctaw Indians who remained in Mississippi and received patents for lands under the fourteenth article of the treaty of 1830. This construction constituted a reversal of the principle previously adopted by the commission in making the so-called "McKennon roll," to wit: A presumption that the ancestors of full-blood Choctaws residing in Mississippi had fully complied with the technical requirements of article 14 of said treaty. It resulted that only six or seven persons claiming as Mississippi Choctaws were enrolled under the act of May 31, 1900, although there were from 6,000 to 8,000 applications filed in 1900 and the early part of 1901.

During this period, from 1900 until the compromise settlement was made in the Choctaw-Chickasaw agreement of July 1, 1902, the Choctaw Nation and the Dawes Commission, especially members McKennon and Bixby,

were opposed to recognizing the rights of the Mississippi Choctaws to citizenship in the Choctaw Nation, and contended that they had no rights and ought not to be enrolled as such citizens, and that no attention should be paid to their said claim to citizenship in the Choctaw Nation. (*Dep. of Ex-Indian Comm'r W. A. Jones, R. 3272, 3283, 3292, 3296; Dep. of Van Hoy, R. 3254-5-6. Vol. 11, p. 116-122.*)

The Secretary of the Interior on August 26, 1899, directed the Dawes Commission to follow the full-blood rule of evidence recommending in the report of said commission dated March 10, 1899, in the identification of Mississippi Choctaws, and again on October 19, 1900, directed the said commission to follow that rule of evidence.

"For some reason not apparent upon the face of the statute the Dawes Commission invoked a species of technical refinements and in its quasi judicial capacity construed the act of May 31, 1900, as prospective in its operation, and required all applicants thereunder to trace their ancestry to Mississippi Choctaw Indians who remained in Mississippi and received patents for lands under the Fourteenth Article of the Dancing Rabbit Creek Treaty. It was a most restricted ruling and resulted, as above stated, in the enrollment of but six or seven persons out of from 6,000 to 8,000 applicants." (*See Vol. 11, pp. 54 and 122.*)

XXV.

June 13, 1900, the Choctaw Cotton Co. was organized and incorporated under the laws of West Virginia by said Winton and Owen for the purpose of financing the removal of individual Mississippi Choctaws to the Indian Territory and there acquiring locations for them. Two-thirds of the capital stock of said company was issued to said Owen and

one-third to said Winton. Subsequently all contracts theretofore taken by said Winton and his associates with individual Mississippi Choctaws were assigned to said Choctaw Cotton Co.

The said Choctaw Cotton Company was on the 7th day of August, 1911, dissolved, and its charter annulled and surrendered by decree of the Circuit Court of Kanawa County, W. Va., and all of the stock of said Choctaw Cotton Company has been filed in the Court by Owen and Winton, the owners thereof. (*R. 305, 2518, 2622-3, R. 2805, see Vol. 11, p. 123.*)

XXVI.

February 7, 1901, an agreement was made between the Dawes Commission and representatives on behalf of the Choctaw and Chickasaw Nations in the Indian Territory, which provided for the making up of the final rolls of all citizens and freedmen of the two nations upon which allotments of land and distribution of tribal property should be made. **Sections 13, 14 and 15** (* * *p. 12, Finding 26, ¶1, Vol. 11, p. 123* * *) of said agreement provided (* * *p. 12, Finding 26, ¶ 2 and 3; * * Vol. 11, p. 123*):

"MISSISSIPPI CHOCTAWS

"13. All persons heretofore identified by the Commission to the Five Civilized Tribes as Mississippi Choctaws, and whose names appear upon the schedule dated March 19, 1899, prepared by said commission under the provisions of the act of Congress approved June 28, 1898, 30 Stats., 495, and such full-blood Choctaw Indians residing in the State of Mississippi, and such full-blood Choctaw Indians as may have removed from the State

of Mississippi to Indian Territory, as may be identified by said commission, shall alone constitute the 'Mississippi Choctaws' entitled to benefits under this agreement.

"14. All 'Mississippi Choctaws,' as herein defined, who shall remove to and in good faith establish their residence upon the lands of the Choctaw and Chickasaw tribes within six months after the *ratification* of this agreement shall be enrolled by said commission upon a separate roll designated 'Mississippi Choctaws;' and lands equal in value to lands allotted to citizens of the Choctaw and Chickasaw tribes shall be set apart for each of them. All such persons who reside continuously upon the lands of the Choctaw and Chickasaw tribes for a period of three years after enrollment as above provided shall, upon proof of such continuous residence, receive patents as provided in the Atoka agreement, and they shall hold the lands thus allotted to them as provided in the Atoka agreement for citizens of the Choctaw and Chickasaw tribes.

"15. If, at the end of three years after such enrollment, any such 'Mississippi Choctaw' fails to make proof of continuous bona fide residence upon said lands as above provided, he shall be deemed to have acquired no interest in the lands thus set apart to him, and the said lands shall be sold at public auction for cash under rules and regulations prescribed by the Secretary of the Interior and the proceeds paid into the Treasury of the United States to the credit of the Choctaw and Chickasaw tribes. Such lands shall not be sold for less than their appraised value according to the appraisal provided for in the Atoka agreement. Upon payment of the full purchase price patent shall issue to the purchaser in accordance with the provisions of the Atoka

agreement wherein it provides for patents to allottees." (*House Doc. 490, 65th Cong., 2d Sess., p. 12.*)

The above three sections were subsequently amended at a conference between representatives of the Interior Department, the Dawes Commission, and the delegates of the Choctaw and Chickasaw tribes. Said Sections 13, 14 and 15 as amended at said conference read as follows:

"MISSISSIPPI CHOCTAWS

"13. All persons duly identified as Mississippi Choctaws by the Commission to the Five Civilized Tribes under the act of Congress approved June 28, 1898, or the act of Congress approved May 31, 1900, may, at any time prior to September 1, 1901, make bona fide settlement within the Choctaw-Chickasaw country, and on proof of such settlement to such commission on or before December 31, 1901, may be enrolled by such commission as Mississippi Choctaws entitled to allotment, which enrollment shall be final when approved by the Secretary of the Interior.

"14. When any such Mississippi Choctaw shall have continuously resided upon the lands of the Choctaw and Chickasaw nations for a period of three years, including his residence thereon before and after such enrollment, he shall, upon due proof of such continuous residence, made in such manner and before such officer as may be designated by the Secretary of the Interior, receive a patent for his allotment, as provided in the Atoka agreement, and he shall hold the lands allotted to him, as provided in that agreement for citizens of the Choctaw and Chickasaw nations.

"15. If within four years after such enrollment any such Mississippi Choctaw, or his heirs or representatives

if he be dead, fails to make proof of such continuous bona fide residence for the period so prescribed or up to the time of the death of such Mississippi Choctaw in case of his death after enrollment, he, and his heirs and representatives if he be dead, shall be deemed to have acquired no interest in the lands set apart to him, and the same shall be sold at public auction for cash, under rules and regulations prescribed by the Secretary of the Interior, and the proceeds paid into the Treasury of the United States to the credit of the Choctaw and Chickasaw tribes. Such lands shall not be sold for less than their appraised value, according to the appraisement provided for in the Atoka agreement. Upon payment of the full purchase price patent shall issue to the purchaser in accordance with the provisions of the Atoka agreement, wherein it provides for patents to allottees." (*House Doc. 490, 56th Cong., 2d Session, p. 5, Vol. 11, pp. 123-126.*)

The effect of these amendments at said conference in the Interior Department was to strike out the recognition of (* * p. 12, *Finding 26, ¶ 4; * * Vol. 11, p. 126*) the schedule contained in the so-called "McKennon roll" of March 10, 1899, which had not been officially approved and which roll the Dawes Commission had requested permission to withdraw, and also to eliminate the full-blood rule of evidence relating to Mississippi Choctaws, and to provide in lieu thereof for the identification of Mississippi Choctaws in accordance with the acts of Congress enumerated in the section as amended and for the enrollment of Mississippi Choctaws, conditioned upon their removal in the manner and within the time as therein specified. The agreement as thus amended was transmitted on February 23, 1901, to the House of Representatives by the Secretary of the Interior, with his recommendation for

its ratification. Said agreement was not ratified, however, prior to the adjournment of Congress on the ensuing 4th of March.

XXVII.

April 1, 1901, the second party, referred to in Finding XXI, sent to Mississippi by the Dawes Commission for the purpose of making a complete and accurate roll of Mississippi Choctaws, resumed hearings at Meridian, Miss., and held continuous sessions there and at other places in Mississippi until the latter part of August, 1901. (* * P. 13, Finding 27; * * see also *Part One Defendant's Brief*, pp. 10-11, and *Plaintiff's Brief*, Vol. 10, p. 53, Vol. 11, pp. 126-128.) Being advised by said Owen, and believing that the roll made by Commissioner McKennon in 1899, referred to in Finding XX, was a finality and constituted a favorable judgment in behalf of the individual Mississippi Choctaws whose names appeared thereon, Winton and his associates advised all Indians who had previously been enrolled not to appear again before the commission for identification. (* * P. 13, Finding 27, * * Vol. 11, pp. 128-129.)

XXVIII.

June 20, 1901, said Winton, acting under advice of counsel, began taking new contracts with individual Choctaws living in Mississippi in lieu of all previous contracts theretofore taken by him and his associates, as described in Finding X. These latter contracts in place of stipulating for one-half of the prospective allotments of said Indians provided for the payment of a sum of money equal to one-half of the value of the net recovery of or for said Indians in land, money or money values, and, unlike said first-named contracts, further provided

for the removal of said Mississippi Choctaws from their places of residence to the Choctaw Nation in the Indian Territory. Said latter contracts were taken in a series numbered 1 to 834, beginning with the contract of the defendant, Jack Aron, and embraced about 2,000 persons. Said last-named contracts were also subsequently assigned to said Choctaw Cotton Co. and have been filed in Court as evidence of authority and employment to represent the Mississippi Choctaws and for no other purpose. (*R. Vol. 1, p. 25; Vol. 11, p. 129.*)

XXIX.

March 21, 1902, while preparation of the identification roll of Mississippi Choctaws was still in progress, an agreement was entered into between the Choctaw and Chickasaw Nations and the Dawes Commission, in which, by sections 41, 42, 43 and 44, it was proposed to fix the status of the Mississippi Choctaws. This agreement, after being amended in Congress as hereinafter set out, was approved by act of Congress July 1, 1902, and ratified by the Choctaws and Chickasaws on September 25, 1902. *32 Stat., 641.* It was under this agreement, known as the "Choctaw-Chickasaw supplemental agreement," that practically all of the Mississippi Choctaws were enrolled and secured their right to allotments of Choctaw tribal lands, Section 41 of said agreement as originally signed by the Dawes Commission and representatives of the two nations reads as follows:

"41. All persons duly identified by the Commission to the Five Civilized Tribes under the provisions of section 21 of the act of Congress approved June 28, 1898 (*30 Stat., 495*), as Mississippi Choctaws entitled to benefits under article 14 of the treaty between the United States and the Choctaw Nation, concluded September 27, 1830, may, at

any time within six months after the date of the final ratification of this agreement, make bona fide settlement within the Choctaw-Chickasaw country, and upon proof of such settlement to such commission within one year after the date of the final ratification of this agreement may be enrolled by such commission as Mississippi Choctaws entitled to allotment as herein provided for citizens of the tribes, subject to the special provisions herein provided as to Mississippi Choctaws, and said enrollment shall be final when approved by the Secretary of the Interior. The application of no person for identification as a Mississippi Choctaw shall be received by said commission after the date of the final ratification of this agreement."

April 24, 1902, a memorial by Winton and his associates was introduced in the Senate in behalf of the full-blood Mississippi Choctaws, which reviewed the prior legislation relative to their claims and prayed that the provisions of the supplemental agreement then pending should be amended so that the full-blood rule of evidence should be established and the Mississippi Choctaws be given time after identification to remove to the Choctaw country and longer time within which to make application. In this memorial it was stated:

"The unjust provisions and technical rules contained in sections 41, 42, 43 and 44 of the pending agreement were no doubt prepared by the attorneys representing the Choctaw and Chickasaw Nations with a view to barring out the pretenders who have attempted to secure enrollment in said nations by fraud. We do not blame but, on the other hand, commend all efforts of such attorneys to accomplish such a purpose; but we call attention to the fact that while attempting to accomplish this purpose the wording of the provisions is such that they unfortunately do a great injustice to a large number of full-blood Mississippi Choctaws

who have already been identified, as stated above, and who are entitled to enrollment."

The said memorial prayed that sections 41, 42, 43 and 44, which it was alleged imposed onerous conditions upon Mississippi Choctaws, should be struck out and a plain provision made as follows:

"41. All persons heretofore identified by the Commission to the Five Civilized Tribes as Mississippi Choctaws, and whose names appear upon the schedule dated March 10, 1899, prepared by said commission under the provisions of the act of Congress approved June 28, 1898, *30 Stat. L.*, 495, and such full-blood Mississippi Choctaw Indians as may be identified by said commission, and the wives, children, and grandchildren of all such full-blood Choctaws, shall alone constitute the 'Mississippi Choctaws' entitled to benefits under this agreement.

"42. All 'Mississippi Choctaws,' as herein defined, who shall remove or may have removed to the lands of the Choctaw and Chickasaw tribes within twelve months after official notification of their identification, shall be enrolled by said commission upon a separate roll designated 'Mississippi Choctaws;' and lands equal in value to lands allotted to citizens of the Choctaw and Chickasaw tribes shall in like manner be selected and set apart for each of them. All such persons who reside upon the lands of the Choctaw and Chickasaw tribes for a period of one year after enrollment as above provided shall, upon proof of such bona fide residence, receive patents as provided in the Atoka agreement, and they shall hold the lands thus allotted to them as provided in the Atoka agreement for citizens of the Choctaw and Chickasaw tribes, and be treated in all respects as other Choctaws."

Senator Harris, at the request of said Owen, introduced an amendment embodying the foregoing statements from

the memorial, which was submitted to the Department of the Interior and was adversely reported upon.

Section 41 was subsequently amended during the ensuing debates in the House and Senate, and as finally enacted reads as follows, the amendments adopted being indicated by italics.

"41. All persons duly identified by the Commission to the Five Civilized Tribes under the provisions of section 21 of the act of Congress approved June 28, 1898 (30 Stat., 495), as Mississippi Choctaws entitled to benefits under article 14 of the treaty between the United States and the Choctaw Nation concluded September 27, 1830, may, at any time within six months after the date of *their identification as Mississippi Choctaws by the said commission*, make bona fide settlement within the Choctaw-Chickasaw country, and upon proof of such settlement to such commission within one year after the date of the said identification as Mississippi Choctaws shall be enrolled by such commission as Mississippi Choctaws entitled to allotment as herein provided for citizens of the tribes, subject to the special provisions herein provided as to Mississippi Choctaws, and said enrollment shall be final when approved by the Secretary of the Interior. The application of no person for identification as a Mississippi Choctaw shall be received by said commission after *six months subsequent to the date of the final ratification of this agreement, and in the disposition of such applications all full-blood Mississippi Choctaw Indians and the descendants of any Mississippi Choctaw Indians, whether of full- or mixed-blood, who received a patent to land under the said fourteenth article of the said treaty of 1830 who had not moved to and made bona fide settlement in the Choctaw-Chickasaw country prior to June 28, 1898, shall be deemed to be Mississippi Choctaws entitled to benefits under article 14 of*

the said treaty of September 27, 1830, and to identification as such by said commission, but this direction or provision shall be deemed to be only a rule of evidence and shall not be invoked by or operate to the advantage of any applicant who is not a Mississippi Choctaw of the full-blood or who is not the descendant of a Mississippi Choctaw who received a patent to land under said treaty, or who is otherwise barred from the right of citizenship in the Choctaw Nation. All of said Mississippi Choctaws so enrolled by said commission shall be upon a separate roll."

(NOTE.—That part of Section 41 in italics shows the changes made by amendments in accordance with the prayer of the Winton Memorial of April 24, 1902, after the section had been submitted and earnestly recommended to Congress for passage in its exact words by the Secretary.)

The rule of evidence that all full-blood Choctaws who had not removed to and made bona fide settlement in the Choctaw-Chickasaw country prior to June 28, 1898, should be deemed to be Mississippi Choctaws entitled to benefits under article 14 of the treaty of September 27, 1830, and identified as such by the Dawes Commission, incorporated in section 41 of the act of July 1, 1902, was introduced as an amendment to the bill by Mr. Curtis, and was drafted by one McMurray, attorney for the Choctaw Nation, and Assistant Attorney General Van Devanter (* * p. 16, *Finding 29*, last paragraph; * * Vol. II, p. 129-133) in the way of a compromise settlement of, and to end the long and somewhat furious contest which demanded a larger recognition of the rights of the Mississippi Choctaws to citizenship in the Choctaw Nation, thus granting substantially the amendment contended for by attorneys for the Mississippi Choctaws and as prayed for by them in said memorial to the House and

Senate of April 24, 1902, that the full bloods should be admitted and given time after identification within which to remove to the Choctaw Country West.

XXX.

The passage of the Act of July 1, 1902, as submitted by the Secretary of the Interior to Congress, was actively opposed by Owen and Winton, Attorneys for the Mississippi Choctaws, and the amendment of Sections 41 and 42 thereof were made as the result of the long contest from 1896 to July 1, 1902, inclusive, waged by Owen, Winton and associates in behalf of the rights of the Mississippi Choctaws to citizenship in the Choctaw Nation. (* * P. 16, *Finding* 30, ¶ 1; * * Vol. 11, pp. 133-144.)

The Indian appropriation act of March 3, 1903, 32 Stat., 982, 987, contained the following provision:

"That the sum of twenty thousand dollars, or so much thereof as is necessary, is hereby appropriated, to be immediately available, for the purpose of aiding indigent and identified full-blood Mississippi Choctaws to remove to the Indian Territory to be expended at the discretion and under the direction of the Secretary of the Interior."

The special disbursing agent of the Dawes Commission was thereafter sent to Mississippi to carry out the provisions of this act. Said agent there organized parties and assembled all said Indians that could be found and induced to come at Meridian, Miss., from whence they were later transported in two parties by special trains to Indian Territory, where they were further maintained until subsequently placed upon allotments and supplied with tools, other equipment, and rations for six months, all the expenses thereof being paid by the United States. The total number of said

Indians thus transported, maintained and equipped at the expense of the United States was 420.

XXXI.

The act of April 26, 1906, entitled "An act to provide for the final disposition of the affairs of the Five Civilized Tribes of the Indian Territory, and for other purposes," contains the following:

"Sec. 2. That for ninety days after approval hereof applications shall be received for enrollment of children who were minors living March fourth, nineteen hundred and six, whose parents have been enrolled as members of the Choctaw, Chickasaw, Cherokee, or Creek Tribes or have applications for enrollment pending at the approval hereof, and for the purpose of enrollment under this section illegitimate children shall take the status of the mother, and allotments shall be made to children so enrolled.

"Sec. 21.

* * * * *

"That heirs of deceased Mississippi Choctaws who died before making proof of removal to and settlement in the Choctaw country and within the period prescribed by law for making such proof may, within sixty days from the passage of this act, appear before the Commissioner to the Five Civilized Tribes and make such proof as would be required if made by such deceased Mississippi Choctaws; and the decision of the Commissioner to the Five Civilized Tribes shall be final therein, and no appeal therefrom shall be allowed." 34 Stat., 137, 145.

One hundred and eighty-seven full-blood Mississippi Choctaws were enrolled under the provisions of section 2 of the above act.

Owen and Winton on behalf of the Mississippi Choctaws prepared a memorial which was submitted to

Congress by Representative Stephens, March 15, 1904 (Ex. 1, R. L. O., p. 341), and in the Senate by Senator Money, Cong. Rec., 3025, March 9, 1904, in which they prayed that no distinction against Mississippi Choctaws should be made (said Ex. 1, p. 342) and Congress, at the instance of Owen (R. 299) embodied in the Act approved June 21, 1906, 34 Stat., 341, a provision as follows:

"No distinction shall be made in the enrollment of full-blood Mississippi Choctaws who have been identified by the United States Commission to the Five Civilized Tribes, and who had removed to the Indian Territory prior to March 4, 1906, and who shall furnish proof thereof."

From 1896, when Owen and Winton first became interested in the matter of the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation to 1906, they, as attorneys for said Mississippi Choctaws, persistently and continuously presented the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation, and arguments both oral and written in support thereof, to Congress, the committees of Congress, Members of Congress, the Secretary of the Interior, the Bureau of Indian Affairs, the Dawes Commission, and the officials and representatives of the Choctaw Nation, and during said period Owen was recognized by the committees of Congress, Members of Congress, and other officials of the Government as the attorney for the Mississippi Choctaws, and as the said attorney faithfully, persistently, forcefully and successfully represented said Mississippi Choctaws before Congress, the committees of Congress, and the officials of the United States and the Choctaw Nation, and had it not been for the labor of said Owen in their behalf, the rights of

the Mississippi Choctaws to citizenship in the Choctaw Nation would not have been, as it was, recognized by Congress. (*R. 315, 316, 317, 318, 319, 410-11, 413-15, 416, 553, 2527, 2573; Dep. of Sen. Williams R. 535, 542, 548, 552-6; Vol. 11, pp. 144-146.*)

XXXII.

The Dawes Commission received applications from approximately 25,000 persons for enrollment as Mississippi Choctaws. Of this number 2,534 were identified by the commission, but of the persons so identified 1,072 failed to remove to Indian Territory or submit proof of their removal and settlement within the time required by law. The total number of applicants finally enrolled and who have received allotments as members of the Choctaw Nation is 1,643, of whom only 833 appear on the roll of March 10, 1899, and of whom only 696 had contracts with Winton and his associates.

The funds derived from sales of allotted lands of enrolled Mississippi Choctaws, subject to the restrictions upon alienation prescribed by section 1 of the act of May 27, 1908, *35 Stat., 312*, are held by the Government to the credit of the individual Indians entitled thereto. All other funds belonging to said enrolled Mississippi Choctaws are held as tribal funds, the names of said Mississippi Choctaws being carried on a separate roll.

The value of the undistributed property of the Choctaw-Chickasaw Nation is shown by a memorial of the Choctaw General Council of the 8th of October, 1909, placing the value of the unallotted lands, the coal and asphalt lands, the undisposed of town lots and the public buildings, belonging to the Choctaw tribe of Indians, the Choctaw Capitol building, the academy and seminary buildings, the Court House and jails, undis-

posed of, at sixty millions of dollars and in which the Mississippi Choctaws have an undivided equal interest with all other Choctaws. (*See Memorial Senate Doc. 390, 61st Congress, 2d Session, p. 123.*)

In the matter of the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation, the plaintiff Owen, during the period of several years in which he was engaged in their behalf, representing them as their attorney, protecting their rights and obtaining the recognition and legalization of their rights to citizenship in the Choctaw Nation, has expended approximately thirty-five thousand dollars in cash for which he has not been reimbursed. Neither Winton nor any of his associates have ever received any compensation whatever for any of the services rendered in behalf of the Mississippi Choctaws. (*R. 302-3, 2624.*)

From the foregoing primary facts the Court finds as an ultimate fact, so far as it is a question of fact, that the memorials of Winton and his associates with which the Senate and House of Representatives were flooded between 1896 and 1906, the arguments before the Committees of the Senate and of the House, the arguments before the Dawes Commission, the United States Courts, the Attorney-General, and the Interior Department created a powerful sympathy in favor of the Mississippi Choctaws, caused Congress to pass numerous acts in their interest, caused the identification of the Mississippi Choctaws, and resulted in the enrollment of 1,643 persons on a separate roll under the act of July 1, 1902, as amended by the acts of April 26 and June 21, 1906. (*34 Stat. L. 137, 145, 341.*)

From the foregoing primary facts the Court finds as an ultimate fact, so far as it is a question of fact, that the said 1,643 Mississippi Choctaws who were admitted to

citizenship in, and received allotments as members of, the Choctaw Nation, obtained the right to become such citizens and thereby receive allotments as a result of the labor and work done by Winton, Owen and associates during a period of several years prior to the passage of the acts under which they were enrolled and allotted, and that a reasonable, just and equitable compensation for such services on the principle of *quantum meruit* would be a sum equal to ——— per cent of \$15,000,000.00, the total value of the estates thereby received by the said 1,843 Mississippi Choctaws, or the sum of \$———. (R. 302, 345-6, 352-3, 472, 2524, etc.; Vol. 11, pp. 147-162.)

XXXIII.

THE ESTATE OF CHESTER HOWE.

1. Chester Howe, deceased, was for many years an attorney and counsellor at law, a resident of the Territory of Oklahoma, and a practitioner therein. In 1896 he removed his office and place of practice to Washington, D. C., where he continued to reside until his death, which occurred October 1, 1908, while on a visit to Oklahoma.

2. In the early part of the year 1899 said Howe, by virtue of an oral agreement made with Louis P. Hudson, acquired an undivided one-third interest in all contracts taken by said Hudson and Arnold for the firm of Hudson & Arnold, with individual Mississippi Choctaw claimants, the purpose of said contracts being to secure the rights of said Mississippi Choctaws to allotments of tribal lands of the Choctaw Nation and to remove said Indians to the Indian Territory.

The said interest thus acquired by said Howe included

approximately 465 contracts with individual Mississippi Choctaw claimants taken by L. P. Hudson and J. E. Arnold, or the firm of Hudson & Arnold, prior to the dissolution of said firm, in the month of August, 1901.

3. The services contemplated by said agreement to be rendered by said Howe were legal services before Congress and the Interior Department in representing and protecting the interests of said Indians and establishing their rights in and to lands in the Choctaw Nation.

4. Large sums of money were collected by said Arnold and said Hudson from various persons on account of said contracts with said individual Mississippi Choctaw claimants, the amount of which is not disclosed, for which said Hudson and said Arnold failed to account to said Howe for the latter's proportional share thereof. Because of this fact said Howe became greatly dissatisfied in the spring of 1902 with the Mississippi Choctaw business and decided to withdraw therefrom, and notified his correspondents accordingly. Thereupon about May 12, 1902, said Arnold went to Washington and on that date procured the further assistance of said Howe by the acknowledgment, in writing, of the agreement previously made by Hudson with Howe that the latter should receive one-third of the fees in the Hudson and Arnold contracts; and also by signing an agreement authorizing the employment of J. H. Ralston, of the firm of Ralston & Siddons, to assist said Howe. Thereafter, in May, 1902, Howe employed the firm of Ralston & Siddons to assist him in securing the rights of said Mississippi Choctaw applicants, upon a contingent fee of \$5,000, to be paid in sums of \$250 or more by Howe out of his own fees as fast as the same could be collected, the amounts thus collected to be evenly divided between the said firm of Ralston & Siddons and said Howe until the fee should be paid.

(* * P. 18, Finding 33, ¶ 5; * * Vol. 11, pp. 162-164.)

Between the months of December, 1900, and July, 1902, the said Howe was actively engaged in presenting claims of Choctaws resident in Indian Territory, and mixed-blood Indians, claiming as Mississippi Choctaws, for allottable shares of lands and moneys of the Choctaw Nation before the Interior Department, which had been rejected by the Dawes Commission. (R. 1634, 1635, 1718, 1719, 1721, 1722; Vol. 11, pp. 162-164.)

It is not established by the evidence, however, that the legal services rendered by Howe were effective in establishing the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation, or that such legislation as was enacted, and under which said Mississippi Choctaws received allotments in the tribal lands of said Choctaw Nation, was the direct result of his professional services.

* * * * *

XLIII.

THOMAS B. SULLIVAN AND JOSEPH H. NEILL

1. In the spring of 1897 Thomas B. Sullivan, a practicing attorney, and Joseph H. Neill, a merchant, both residing at Carthage, Miss., were jointly employed under verbal agreement by Charles F. Winton to assist him to secure contracts in Mississippi with Choctaw claimants. (* * P. 29, Finding 43, ¶ 1; * * Vol. 11, pp. 164-167.)

2. Said Sullivan and Neill thereafter and until May, 1903, secured a number of said contracts for said Winton in the joint names of Winton and his associates, Owen, Daley and Logan, and also co-operated with and assisted said Winton in bringing said Indians and their witnesses

before Commissioner McKennon for identification and enrollment at the hearing conducted by him in Mississippi in 1899.

(• • P. 29, Finding 43, ¶ 3 and 4; • • Vol. 11, pp. 164-167.)

5. During the month of March, 1903, said Sullivan and Neill in further pursuance of their said employment moved 22 Mississippi Choctaws from Mississippi to the Indian Territory and were reimbursed the amount of their expenses by Robert L. Owen.

6. Said Sullivan and Neill have not received any compensation directly or indirectly for their services or expenses in this matter.

WILLIAM W. SCOTT,
Attorney for Plaintiff.

The Memorials in behalf of the Mississippi Choctaws which Winton and associates prepared and caused to be presented to Congress referred to in the findings of fact and Congressional documents bearing out the same question are as follows:

MEMORIAL AND PETITION ON BEHALF OF THE MISSISSIPPI CHOCTAWS

To the Honorable, The Secretary of the Interior:

In anticipation of your report to the Congress of the United States, as to the condition and status of the full-blood Choctaws of Mississippi, most of whom are utterly poverty stricken and who speak the Choctaw language alone, I have the honor to submit the following memorial, requesting that you make it a part of your findings or at

least an exhibit to your report, and give it such consideration as in your judgment you may deem just.

It is the purpose of this petition to show that the Mississippi Choctaws for valuable consideration expressly bought and paid for two things, to be enjoyed jointly and coincidently, to wit: the right of residence in Mississippi, with the further right of not losing the privilege of a Choctaw citizen by such residence in Mississippi, and that such residence should never be construed as depriving them of this right thus established by treaty, and that such right cannot be taken from them without their consent. As exhibits hereto, I inclose (Exhibit 1) a short memorial of the Mississippi Choctaws; (Exhibit 2) a second memorial; and also (Exhibit 3) Report H. R. 3080, 54th Cong., 2d Sess.

HISTORICAL STATEMENT.—October 18, 1820 (U. S. Stats. 7, 211, Art. 2), the lands in Indian Territory and to the head of Canadian and Red Rivers, equal to about 26,000,000 acres, were bought by 10,000 Choctaw Indians, who then lived in Mississippi, without condition, and especially without condition that the land should escheat if the Indians became extinct or abandoned it. It was equal to about 2,600 acres apiece.

May 28, 1830, Congress passed an Act authorizing an exchange of lands west of the Mississippi River for those east of the Mississippi River held by Indian tribes, which Act contained a general proviso as follows: "Provided always that such lands shall revert to the United States if the Indians become extinct or abandon the same." This Act manifestly should not attach a condition to the land previously granted the Choctaws in 1820, although it was subsequently injected in the Choctaw Patent of March 23, 1842.

The following September of 1830, a treaty was made by

the Mississippi Choctaws, including those there now resident as well as those who moved to the Indian Territory, in which the United States contracted and conveyed to the Choctaw Nation, a tract of country west of the Mississippi River, now embraced in the Choctaw and Chickasaw Nations and in the leased district, previously conveyed in 1820, but now pledged anew in fee simple to these Mississippi Choctaws and their descendants, about 20,000,000 acres or 2,000 acres apiece.

This treaty of 1830 was signed by one hundred and seventy-three leading Choctaws, who were simply the leading men of the various towns, the Choctaws, at that time, having no organized constitutional government. This is a very important fact to which your attention is called, for it renders it impossible to differentiate the rights of the Mississippi Choctaws, a part and parcel of the Choctaw Nation which remained in Mississippi, from other Choctaws who moved west, to become generally known as the Choctaw Nation, the Choctaws of Mississippi being as much a part of the Choctaw nation under this old organization and of right as much entitled now to be so regarded as the Choctaws who moved west. The Choctaw Nation in 1830 consisted simply of an aggregate of individual Choctaw Indians, who associated in little towns and villages and had no constitutional government. The present Choctaw constitution was not adopted by the western Choctaws until January 11, 1860, thirty years subsequent to this time.

The treaty of 1830 was very difficult to make; the commissioners repeatedly failed, but it was finally accomplished by Greenwood Leflore, Principal Chief of the Choctaws, by means of inserting the pledges and guarantees of the 14th Article of the Treaty of 1830. Except for this article, the treaty could not have been made by the United

States. It was and is now a very important article to the Mississippi Choctaws (see affidavit of Greenwood Lafore, Exhibit 3, p. 6, paragraph 1). This treaty, which secured for the United States lands of immense value in Mississippi still retained by the Choctaws, declares in specific terms that those Choctaws, who chose to remain in Mississippi should have the right of selecting land, acquiring title, and selling it and becoming citizens of Mississippi and remaining there and still "not lose the privilege of a Choctaw citizen." This important right of becoming citizens of Mississippi, remaining in Mississippi and still not losing the privilege of a Choctaw citizen has not been relinquished by the Mississippi Choctaws (see declarations made by Hon. D. R. Francis, Secretary of the Interior, and that of the Commissioner of Indian Affairs, to the effect that such Choctaws have not relinquished such rights as shown by any of the records of the United States Government—Exhibit 3, page 2,—this communication being in response to a resolution of the U. S. Senate, asking the status of the Mississippi Choctaws).

The privilege of a Choctaw citizen consists of certain property rights on the one hand and certain political rights on the other. The property rights consist of a joint communal ownership in the national property, including land at that time equal to about 2,000 acres each, proceeds of lands, use of public lands, as well as an interest in public funds, and the right to impart to his children, the issue of his body, the same communal right of property enjoyed by the parent; the political rights are those accorded under the tribal law in the matter of protection to life and property, as established by tribal statute. The privilege of a Choctaw citizen consisted of property rights of great value and of political rights of small value. No Choctaw law required a recognized bona fide Choctaw to live within

a prescribed territory east or west. His birth and blood fixed his status which was not impaired by non-residence.

In the division which took place in 1830, a large part of the Choctaw people, determined at that time to remain in Mississippi, although afterward all except your petitioners were compelled by great pressure to move to the Choctaw Nation west and are now there resident; they determined to have allotments of land there, where their homes were (see evidence in New Proceeds case, to which reference is here made, and which is attached as part hereof) and at the same time not give up the property rights which they had previously bought and paid for in Indian Territory, by the Treaty of 1820; they determined not to give up the privileges of a Choctaw citizen, which included this ownership of large landed property, but they were willing, in exchange for individual allotments in Mississippi, to give up, as an offset, their individual interest in the annuity then existing, and secured by the Treaty of 1830.

The history of this matter is fully known and abundantly set forth in the record above recited. It was a fair trade and the treaty was so drawn that they could not reclaim an interest in the annuity by removing west. This property right, bought by the Mississippi Choctaws, as grantees in the Treaty of 1820 and 1830, and in exchange for property by them delivered as grantors in those treaties, they did not intend to relinquish; they were property rights of great money value, and they expressly stipulated that they should not lose this privilege because of their determination to remain in Mississippi.

The Mississippi Choctaws, although extremely poor then and now, were not and are not unlike other mortal men of strong affections, who love the land of their birth, in which they had raised their babes, and found happiness with

wives, friends and neighbors, and in which they had buried parents, wives and children. It should not be accounted an unworthy or unpatriotic motive in these people that they loved Mississippi and refused to leave it.

It was insisted before the Court, in the case of John Doe v. Choctaw Nation (U. S. Court for Indian Territory, Middle Division, July 1, 1897) that the two latter clauses of Article 14, to wit:—"persons who claim under this Article shall not lose the privilege of a Choctaw citizen; but, if they ever remove, are not to be entitled to any portion of the Choctaw annuity," really means that they shall lose the privilege of a Choctaw citizen if they do not remove.

It is insisted that the latter clause "if they ever remove," really means that they must remove, or forfeit or lose the privileges granted in the first clause, and that no other construction of this language is rational. It is suggested in answer to this singular view, that it is perfectly rational that the first clause should have its full force and effect, and the latter clause should have its full force and effect, without the latter destroying the first. It is perfectly rational to suppose that the Mississippi Choctaws should continue to live in Mississippi, which they were deliberately proposing to do, and that the clause "persons who claim under this Article shall not lose the privilege of a Choctaw citizen" with its large property rights should apply to them with full force, whether they did or did not remove.

It is perfectly rational that the second clause should apply to the Mississippi Choctaws with full force if they ever did remove, and it was reasonable and right that the Mississippi Choctaws who got an advantage in land over the western Choctaws, should not be allowed, after they had gotten this advantage, to remove to the Choctaw Nation on exactly equal terms with those who had not gotten

land in Mississippi. It is entirely rational that the Mississippi Choctaws should have given up their right in the annuity for the privilege of allotments in Mississippi, and having given up the right in the annuity, it was rational and reasonable that they should not by the act of removal repossess themselves of this consideration. With profound respect to the Honorable Court, who seemed to have been impressed by this argument, it is insisted that the language if construed in the manner of interpretation urged by the western Choctaws, should have been written as follows, to wit:

"Persons who claim under this Article shall lose the privilege of a Choctaw citizen unless they remove west to the Choctaw Nation, but in the event of removal shall have the right to be recognized as Choctaw citizens except that they are not to enjoy any portion of the Choctaw annuity."

The second clause of the sentence under consideration, as actually written, to wit:

"If they ever remove, are not to be entitled to any portion of the Choctaw annuity," is manifestly a condition modifying the first clause, which is a reservation of a broad right of citizenship, and which means all it says and nothing less, to wit:

"Persons who claim under this Article shall not lose the privilege of a Choctaw citizen."

Why this declaration?

Manifestly for the reason that residence in Mississippi might, except for this declaration, be some time construed as abandonment of Choctaw citizenship, and therefore, in the same identical Article in which permanent citizenship in Mississippi was provided, was inserted the express provision by which the right of Choctaw citizenship should not be taken away from those who remained in Mississippi, and the sweeping words were inserted, as the treaty re-

cites—"persons who claim under this article shall not lose the privilege of a Choctaw citizen."

But since they got a special allotment in Mississippi, they agreed to give up their right in the annuity, with a provision that would protect the western Choctaws against the Mississippi Choctaws ever reclaiming a part of the annuity, even if they did move west and become a part of the community, which the Mississippi Choctaws however had determined not to do. It was therefore entirely proper and right and necessary to modify the broad proposition that the Mississippi Choctaws who claimed allotments under the 14th Article should not repossess themselves of any interest in the annuity, which, by this contract, was relinquished, even if they should remove to the Choctaw Nation, and the modifying clause was rightly inserted as follows, to wit: "but, if they ever remove, are not to be entitled to any portion of the Choctaw annuity."

The Mississippi Choctaws did not consent to a trial of their rights in the fictitious case of John Doe, did not present their evidence or argue such a case and earnestly protest that they should not be required to do more than the western Choctaws, that is, assist the Government to enroll their numbers. A careful examination of the language of the 14th Article of the Treaty of 1830 makes their rights perfectly clear and incapable of misconstruction.

Let us analyze this language. The clauses in controversy are as follows: "Persons who claim under this Article shall not lose the privilege of a Choctaw citizen;

But

if they ever remove

are not to be entitled to any portion of the Choctaw annuity."

The first is a general proposition, modified by a condition or exception introduced by the word "but," a word used

in the English language to signify an exception or a qualification in the nature of an exception, which cannot be construed as a negation of the proposition it qualifies. It introduces a qualifying clause, to wit, "are not to be entitled to any portion of the Choctaw annuity," which qualifying clause is itself qualified by the interjection of a phrase "if they ever remove," a phrase which might be entirely omitted without destroying the sentence.

If they did not remove, it is manifest as a physical fact that they could not enjoy the annuity, separated as they were by six hundred miles of roadless country; there was only one contingency by which they could possibly enjoy the Choctaw annuity, and that was by removing, and this contingency is provided against by the insertion of the qualifying phrase, "If they ever remove." If this phrase were entirely omitted, the latter clause would be broader than it is and would leave the words, "but are not to be entitled to any portion of the Choctaw annuity," and even this broader construction of the language is incapable of being construed as a negation of the first clause, which it qualifies, to wit: "Persons who claim under this Article shall not lose the privilege of a Choctaw citizen."

The word "but" introduces the condition. The phrase "if ever they remove" qualifies alone the clause which follows it, to wit: "are not to be entitled to any portion of the Choctaw annuity."

The entire clause, as qualified by the phrase "if they ever remove," being itself a qualification of the clause "persons who claim under this Article shall not lose the privilege of a Choctaw citizen."

The general proposition therefore so modified cannot be regarded under any possible circumstances as being negated by the modifying clause or in any way diminished except as to the annuity.

The modifying clause therefore cannot be construed to mean a negation of the principal proposition, but must be confined in its significance to a modification in the nature of the exception stated to the privilege of a Choctaw citizen, to wit, "the annuity." This exception is a reasonable one, based upon a fair exchange of values, whereby the Mississippi Choctaws got land and yielded their interest in the annuity then existing, and placed a condition upon the privileges of Choctaw citizenship, which they retained, by inserting a distinct clause that they should not, even if they removed, repossess themselves of their rights in the annuity which they had exchanged for allotments in Mississippi.

It is true that in the case of *John Doe v. Choctaw Nation*, the Honorable Court does not pass upon the question as to the rights of the Mississippi Choctaws, in the event they should actually move into the Choctaw Nation. Indeed, in declaring that those Mississippi Choctaws who had gone into the Choctaw Nation prior to July 1, 1897, were entitled to allotment, the court evidently thinks that the other Mississippi Choctaws would acquire the right if they should enter the Choctaw Nation, but in finding that John Doe, a Mississippi Choctaw (a legal fiction, created at the instance of the able counsel for the western Choctaws), is not entitled to enrollment because he has not moved into the Choctaw Nation, the Honorable Court, by implication, would appear to impose a condition that removal to the Choctaw Nation is essential and that the Mississippi Choctaws who chose permanent residence in Mississippi with the express agreement that they should not lose the privilege of a Choctaw citizen by so doing, will be required to lose such privilege by so doing, and that the 14th Article, which declared that such persons should not lose the privilege of a Choctaw citizen really meant

that they should lose such right by residence in Mississippi, if persisted in.

While the Mississippi Choctaws were not parties to subsequent treaties between the United States and the Choctaws west, still, on April 28, 1866 (Art. 10 Revised Treaties, 292), the United States reaffirms all obligations rising out of treaty stipulations, and in Article 45 of same Treaty (Revised Treaties, 301) declares that

"All the rights, privileges and immunities heretofore possessed by said Nations or individuals thereof, or to which they were entitled under the treaties and legislation heretofore made and had in connection with them, shall be and are hereby declared to be in full force, so far as they are consistent with the provisions of this treaty."

This appears to sufficiently recognize the rights of the Mississippi Choctaws who were granted the reasonable privilege of living in Mississippi and not losing the privilege of a Choctaw citizen.

It is true that by Articles 11, 12 and 13 of the Treaty of 1866, in the allotment scheme therein set forth, but which was never put into effect, it was provided that a certain notice should be given—"not only in the Choctaw and Chickasaw Nations, but by publication in newspapers printed in the States of Mississippi, etc., to the end that such Choctaws and Chickasaws as yet remain outside of the Choctaw and Chickasaw Nations may be informed and have opportunity to exercise the rights hereby given to resident Choctaws and Chickasaws," and that it was further provided that within five years after the allotment of land had taken place such absentee should select his land and establish residence, or forfeit such right. This condition as imposed on persons not protected under the 14th Article of the Treaty of 1830, was competent on the part of the United States and Choctaw and Chickasaw Nations, but in

so far as it might be argued to relate to the Mississippi Choctaws protected by the 14th Article, it appears only necessary to state that while it recognizes their rights, it proposed a contingent condition of possible forfeiture which neither the United States nor the Choctaw Nation would be competent without the consent of these Mississippi Choctaws to impose, as no one can take from them a vested property right without their consent. The Secretary of the Interior plainly says they were not parties to the Treaty of 1866, or to any other treaty relinquishing their rights.

Attention is called to the fact that the Choctaws themselves have never for a moment denied the rights of the Mississippi Choctaws to an equal interest in the lands west. Indeed, on December 24, 1889 (Exhibit 1, page 2), the Choctaw Nation west of the Mississippi, through their highest constituted authorities, the General Council of the Choctaw Nation, passed a resolution, approved by the Hon. Benj. F. Smallwood, Principal Chief of the Choctaw Nation, declaring that the Mississippi Choctaws are entitled to all of the rights and privileges of citizenship in the Choctaw Nation, notwithstanding the fact of their residence in Mississippi then and now and since 1830, or fifty-nine years, and requested the United States Government to make provision for the immigration of the said Choctaws to the Choctaw Nation west as they were too poor to immigrate themselves. This resolution further provided that a copy of this declaration and memorial by the General Council of the Choctaw Nation, be furnished to the Speaker of the House of Representatives of the United States and to the President of the Senate of the United States, and to the Commissioner of Indian Affairs, with the request that they do all they could to secure the accomplishment of the object of the memorial. It is pertinent to ask what action

has been taken by the Mississippi Choctaws since this time, to deprive them of their treaty rights, freely conceded and voluntarily declared by the General Council of the Choctaw Nation and the Principal Chief of that Nation on December 24, 1889?

There has been no treaty since that time, but the Mississippi Choctaws have been astonished and grieved to find that under the legal fiction of John Doe, son of Richard Doe, their rights have been much prejudiced at the instance of the Choctaw Nation west, in a case presented to the U. S. Court, without their knowledge or consent, and upon erroneous information given to said Court, who, with honorable intention, has made a finding not just to the Mississippi Choctaws.

It is true that the Court holds (*John Doe v. Choctaw Nation*, Middle Div. U. S. Court for the Indian Ty., July 1, 1897)—“that the descendants of the Mississippi Choctaws, by virtue of the 14th Article of the Treaty of 1830, are entitled to all of the rights of Choctaw citizenship, with all the privileges and property rights incident thereto,” and this includes even the annuities they were not to enjoy, but adds the condition “provided they have renounced their allegiance to the sovereignty of Mississippi by removing into the Choctaw Nation, in good faith, to live upon their lands, renewing their allegiance to that Nation, and putting themselves in an attitude whereby they will be able to share in the burdens of their government, as well as to receive the benefits flowing from citizenship.” In other words, they shall have all these rights provided they have previously to this decision given up their right of residence in Mississippi, which they expressly bought and paid for with the agreement that they should not lose the privilege of a Choctaw citizen. In other words, Article 14, of the Treaty of 1830, is construed as an alternate prop-

osition, by which the Mississippi Choctaws who desired to live in Mississippi should not be allowed to do so without "losing the privilege of a Choctaw citizen," a property right of great value, the very thing which Article 14 was drawn to prevent. Article 14 gave them the right to reside in Mississippi and expressly declared that by this residence they should "not lose the privilege of a Choctaw citizen."

Yet the Honorable Court is of the opinion "that absent Mississippi Choctaws are not entitled to enroll as citizens of the Choctaw Nation," and apparently gives no opportunity for any of the Mississippi Choctaws to put themselves in harmony with the spirit of this decision which provides for the enrollment of those Mississippi Choctaws who had moved into the Choctaw Nation prior to July 1, 1897, by giving no time in which the other Mississippi Choctaws might enter.

We wish to know the reason why July 1, Anno Domini, 1897, is established as a dead line against those Choctaws residing in Mississippi on that date? With profound respect, on behalf of the Mississippi Choctaws, it is earnestly urged that that date is nowhere set up by any of the treaties as being made a bar to their rights, and that the Honorable Court has been seriously misled with regard to some of the important facts, from which he has drawn his conclusions. For example, the Honorable Court in referring to the judgment of the Supreme Court of the United States, in the *Net Proceeds* case, states that the money was turned over to the Choctaws by the United States, and by them, with the knowledge and consent of the United States, divided among the Choctaw people in 1889 who lived in the Nation, and that not one farthing of it was ever paid to an absent Mississippi Choctaw, and that no portion of it was ever claimed by them, and that therefore the Mississippi Choctaws confessed that they were not entitled to

the rights of Choctaw citizenship, which however the Choctaw Nation, at this very time, to wit, December 24, 1889, declared that the Mississippi Choctaws fully possessed. The Honorable Court was misinformed. This fund was not paid to the citizens of the Choctaw Nation as such. It was a fund due to special individuals, and paid to them in amounts greatly varying in value, each award being different from the other, and was not a per capita payment at all, nor did a Mississippi Choctaw have a right to participate in it as such, but to the extent that this money was due an individual Choctaw, whose land had been sold by the United States, which he had selected under the 14th Article of the Treaty of 1830, to that extent the money was due to him as an individual, whether he was in the Choctaw Nation or in Mississippi or in any other State, and if it was not paid to such a one in Mississippi when entitled, the Choctaw Nation and the United States are both bounden for it.

A second argument which impressed the Court was the decision of the Supreme Court of the United States (117 U. S. 288) in which the eastern band of Cherokees demanded a part of the invested funds of the Cherokee Nation west, and the Honorable Court held that the eastern Cherokees were individual Indians not shown by evidence to have succeeded to the rights of certain Indians through whom they claimed as descendants, and that in order to enjoy the rights of Cherokee citizenship they would be obliged to move into the Cherokee Nation and be re-admitted, according to Cherokee law. There was no 14th Article in any of the Cherokee treaties like that of the Choctaw Treaty of 1830, or any agreement that any Cherokees could live in North Carolina and still not lose the privilege of a Cherokee citizen. So the case is not a precedent or at all in point.

The general rule of any community or tribe requires an individual who desires to have the privilege of membership to perform the duties of membership. There is only one exception known to us in history—it is the exception made in favor of the Mississippi Choctaws, who were, by the United States and Choctaw Nation, expressly pledged the right to live in Mississippi and still not lose the privilege of a Choctaw citizen, and not only not required to perform the duties of Choctaw citizenship, but on the contrary were expressly permitted to remain in Mississippi and become permanent citizens thereof, while retaining Choctaw citizenship, which really meant important property rights.

The Honorable Court is persuaded to believe that the privilege of a Choctaw citizen, retained by Choctaw choosing to remain in Mississippi under the XIV Article, really means the privilege of moving out of Mississippi into the Choctaw Nation west, and becoming a citizen. He thinks that the privilege of a Choctaw citizen referred to is the privilege of acquiring, by removal, the privilege of citizenship. The privilege of a Choctaw citizen is construed not to mean the right which inheres in the citizen generally, but the privilege of securing such right by doing certain things.

The Honorable Court was led into error by the argument that the privileges of a Choctaw citizen were retained under a condition not named in the treaty. The judgment referred to say they were doubtless to enjoy these rights, "When they put themselves into a position that these privileges could be conferred upon them; and under the conditions and purposes of the treaty how would it be possible for them to put themselves in such position without first removing within the territorial jurisdiction of the Choctaw Nation and within the sphere of its powers, what privileges," asks the Court, "would it be possible for the Choctaw

taw Nation to confer, or a Mississippi Choctaw receive, so long as he remained in Mississippi and out of the limits of the Choctaw Nation?" We answer, the very rights we now seek, to wit: not political rights but property rights of large value, in land and money, of an estate in process of division to the owners thereof. This adequate answer would seem to dispose of the argument, which appears to have convinced the Honorable Court. It is not political protection the Mississippi Choctaws seek. It is their property rights in this estate now⁶ in process of division.

The Honorable Court thinks it unjust and inequitable to permit the Mississippi Choctaws, whom, he alleges, sixty-five years ago, broke away from their kindred and their Nation and have done no duties as Choctaw citizens, to reach forth their hands from a distant and alien home and lay hold of a part of the public domain or common property of the Choctaw Nation, and appropriate it to their own use. This surprising statement we deem it proper to answer; first, the crime of the Mississippi Choctaws, who sixty-five years ago broke away from their kindred and nation, consisted in remaining peacefully in their homes and refusing to move from the State of Mississippi which they loved, and it seems neither a malicious or vindictive act nor one wanting in patriotism; their Nation broke away from them at the instance and urgent request of the United States, not they from their Nation; it is true that they have not since exercised the duties of Choctaw citizenship, but it is also true that the Choctaw Nation, expressly and in terms, agreed with them that they should not be required to do so; and it is also true that the United States agreed with them that they should not be required to do so, and used this as a strong consideration to secure a compliance to the treaty, without which the treaty was itself impossible; and when the Mississippi Choctaws "reached forth

their hands from a distant and alien home to lay hold of a part of the Choctaw domain," they reached forth their hands for what they bought and paid for; for which they paid their right in and to a still larger part of land east of the Mississippi River, which they sold and relinquished to the United States, and are guilty of no wrong in seeking their own, recognized as their own not only by the Article 14 of the Treaty of 1830, and by the Treaty of 1866, but by the striking, complete and absolutely unconditional acknowledgment of the General Council of the Choctaw Nation, which took pains to memorialize the President of the Senate of the United States, the Speaker of the House of Representatives of the United States and the Commissioner of Indian Affairs, and declared that the Mississippi Choctaws were entitled to all the rights of Choctaw citizenship, and this too while they were domiciled and resident in Mississippi.

They reached forth their hands to lay hold of what the Honorable Court itself freely concedes to every Mississippi Choctaw who landed in the Choctaw Nation prior to the first day of July, 1897. Why this invocation against the full-blood Choctaws who reside in humble and poor habitations in the Mississippi swamps and piney woods, describing them as being little less than highwaymen, when they seek only their rights; when they seek only the right freely granted to those who had the means to reach the Choctaw Nation prior to the first day of July, 1897. Why should they be compelled at all to move to the west? And if remove they must, why say they shall not remove after July 1, 1897? Is there then no excuse for the Mississippi Choctaws who have failed to get to the Choctaw Nation? Does not the General Council of the Choctaw Nation and the Principal Chief of the Choctaw Nation, in the memorial before recited, declare to the highest authorities of the

United States that the Mississippi Choctaws are too poor to immigrate themselves? Is their extreme poverty no excuse? Is it unpardonable? Does it justify cutting them off utterly from their inheritance? Are they to be deemed dishonest because of their excessive poverty, or because they seek property, acknowledged on all hands and by everybody to be their own and which they sorely need? Never until July 1, 1897, was their right questioned. The Mississippi Choctaws are perfectly assured that on that day if the Honorable Court had been informed of all the facts that they would have had the sympathy and favorable judgment of the Honorable Court.

The Mississippi Choctaws are the owners, by purchase, of their part of the common property. It was bought by them as grantees in 1820 and 1830, for the considerations paid by the Mississippi Choctaws, as grantors, in these treaties. The Mississippi Choctaws are not unaware that if their rights are taken from them it will increase the per capita share of land and money of the Choctaws and Chickasaws west, and they therefore perceive a reason why the proposed beneficiaries seek to impose conditions against the Mississippi Choctaws, impossible of compliance and thus to deprive them of their rights.

The Western Choctaws having determined on the distribution of their lands, and having appointed a committee to wind up the affairs of the Choctaw Nation, are now laying great stress upon the Mississippi Choctaws bearing the burdens of citizenship, under a government confessedly and notoriously moribund. This ingenious and disingenuous argument has deeply impressed the Honorable Court, the Mississippi Choctaws being undermined through the unchallenged misrepresentations made in the case of the fictitious case of John Doe. It is a pity not a single Mississippi Choctaw could be found and that John Doe had

to be substituted. All actual cases were given fifteen days of preparation—as under the law the Court could only try *de novo* as the Court says—but as for John Doe he needed no preparation or argument, but *ex parte* a case is decided prejudicial to us without notice.

These duties of citizenship from which the Mississippi Choctaws were expressly absolved (and they paid for their absolution) are now absolutely valueless to the western Choctaws, who are determined on winding up their alleged government. But these citizenship duties are craftily brought forth and given great prominence as matters of urgent consequence, when in truth and in fact, their exploitation have no other purpose whatever than the selfish one of depriving the Mississippi Choctaws of their rights in order to enlarge the per capita share of land and money of the western Choctaws. It would seem more fair to urge the duties of citizenship against the Mississippi Choctaws were it not first, that the Choctaw Nation is confessedly moribund and does not need the citizenship duties of the Mississippi Choctaws;

Second, were it not for the utter insincerity of the demand and that the western Choctaws having declared the Mississippi Choctaws unable to comply with the imposed condition of removal, because of extreme poverty and

Third, because the western Choctaws well know the fact that the Mississippi Choctaws bought and paid for their absolution from such duties, when they consented to the Treaty of 1830. The condition which now they desire to impose is most unjust and cannot be characterized as honest or sincere. The Choctaws have no right to ask it, under the treaty; they do not want it as they pretend, and know the Mississippi Choctaws are too poor to grant it. Why do they seek to impose such conditions except as an artful

means of depriving their impoverished brethren and seizing the entire inheritance?

It has been argued on behalf of the western Choctaws that because the treaty recites that the land sold the Choctaws "shall belong to them while they shall exist as a Nation and live on it," or "shall revert to the United States if said Indians and their heirs become extinct or abandon the same," that therefore any Indian not living on the land is guilty of constructive abandonment and loses his portion. If there were any force in this argument, such abandonment would cause the land so abandoned to revert to the United States, a construction the Choctaw Nation certainly is not willing to concede. The western Choctaws who argue thus wish the land thus alleged to be abandoned in this manner to revert to the Choctaw Nation or to the individuals composing it, as they are about to distribute their lands and have agreed to do so. This provision of abandonment, due to the Act of Congress of May 28, 1830, was simply to declare on the property an escheat in favor of the sovereign in the event of the extinction of the grantee or abandonment by the grantee. It never intended to regulate the internal affairs of the guarantee or to relate to the individual Indian as such, and if it applied at all would operate solely in favor of the United States, in whose express interest it was made, and not in favor of the Choctaw Nation. This is manifest, and that this argument was advanced indicates the extremity to which the western Choctaws are driven in order to find means of evading their solemn declaration of December 24, 1889, that the Mississippi Choctaws are entitled to all the rights of Choctaw citizenship.

The premises considered, the Mississippi Choctaws having bought and paid for the right of residence in Mississippi, and having expressly stipulated that it should never

operate to lose them the privilege and property right of Choctaw citizenship, such right having been freely and fully conceded by the Choctaw Nation and by its authorities, as late, certainly, as December 24, 1889, and the Mississippi Choctaws having never relinquished their rights and having never abandoned their rights, and having never been a party to any treaty by which such rights have been modified, now earnestly and respectfully insist upon their full recognition by your Honorable Commission, as the representatives of the United States Government, and request you, as such representatives, to convey this declaration to the Congress of the United States and to the President thereof.

With profound respect, they desire to give notice by you and through you to the Government of the United States that the Mississippi Choctaws are entitled to these rights, and that if the Government consents to any action depriving them of these rights, after this formal notice, the Government of the United States will make itself responsible to the Mississippi Choctaws for such deprivation and that the Mississippi Choctaws will appeal to the Government itself for proper relief, in the proper manner, under the usual methods provided by the Government for the adjustment of such claims, to the full extent of the damage which may be done to the Mississippi Choctaws by the dispersion and distribution of their property over their protest.

With sentiments of the most distinguished consideration, I have the honor to remain, on behalf of the Mississippi Choctaws,

Your faithful and obedient servant,

C. F. WINTON,

Counsel.

ROBT. L. OWEN,

Counsel.

MISSISSIPPI CHOCTAWS

March 3, 1897.—Referred to the House Calendar and
ordered to be printed

Mr. ALLEN, of Mississippi, from the Committee on Indian
Affairs, submitted the following

REPORT

[To accompany H. R. 10372.]

The Committee on Indian Affairs, to whom was referred House bill 10372, respectfully report the same back with a recommendation that it do pass, and, with reference to the rights of the Mississippi Choctaws to citizenship in the Choctaw Nation, report that by the fourteenth article of the treaty of 1830 it was provided that such Choctaws might become citizens of Mississippi, have reservations, and still it was expressly provided in said article that they should "not lose the privilege of a Choctaw citizen" except, as an offset to such reservations in Mississippi, they were not to have any interest in the annuity even if they should remove to the western Choctaw Nation.

Your committee further find that the passage of the treaty of 1830 depended on such fourteenth article. (See the closing lines of Greenwood Leflore's deposition, copy herewith.)

The Choctaw Nation west concedes that these people are entitled to all the rights and privileges of citizenship in the Choctaw Nation and memorialized Congress to that

effect December 24, 1889 (copy herewith). The treaty of 1866 appears to contemplate that the Mississippi Choctaws shall be required within five years after allotment is decided on to move to the Indian Territory and give up the right of residence in Mississippi, which they had previously purchased by the treaty of 1830. The Commissioner of Indian Affairs reports that he finds no provision in any of the treaties by which the Choctaws in Mississippi relinquish the right of Choctaw citizenship under the fourteenth article of 1830 or otherwise, and they were not parties to treaties subsequent to 1830 (copy herewith).

Your committee therefore find that the Mississippi Choctaws expressly retained their rights as Choctaw citizens with the express provision that they should be allowed to reside in Mississippi, and that they have never relinquished this right thus established by treaty, and cannot be justly deprived thereof without their consent.

To prevent fraudulent claims your committee think that no person should be recognized as a Choctaw citizen whose grandparent was not at least a half-blood Choctaw. The Choctaw law requires one-eighth Choctaw blood to entitle them to the rights of Choctaw citizens (copy of act herewith).

Your committee therefore recommend that the bill do pass.

[Bill XII.]

AN ACT entitled an act defining the quantity of blood necessary for citizenship.

SECTION 1. *Be it enacted by the general council of the Choctaw Nation assembled*, That hereafter all persons non-citizens of the Choctaw Nation making or presenting to the general council petitions for rights of Choctaws in this nation shall be required to have one-eighth Choctaw blood

and shall be required to prove the same by competent testimony.

SEC. 2. *Be it enacted*, That all applicants for rights in this nation shall prove their mixture of blood to be white and Indian.

SEC. 3. *Be it further enacted*, That no persons convicted of any felony or high crime shall be admitted to rights of citizenship within this nation.

SEC. 4. *Be it further enacted*, That this act shall not be construed to affect persons within the limits of the Choctaw Nation now enjoying the rights of citizenship.

SEC. 5. *Be it further enacted*, That this act take effect and be in force from and after its passage.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,

Washington, D. C., February 15, 1897.

The foregoing is a correct copy of a law of the Choctaw Nation "defining the quantity of blood necessary for citizenship" as the same appears printed in a volume of the "Laws of the Choctaw Nation in English and Choctaw, from 1886 to 1891, inclusive," now in the possession of this office.

THOS. P. SMITH,
Acting Commissioner.

[SENATE DOCUMENT No. 129, Fifty-fourth Congress, second session.]

DEPARTMENT OF THE INTERIOR,
Washington, February 15, 1897.

SIR: I have the honor to acknowledge the receipt of the following resolution of the Senate, dated 11th instant, viz.:

"*Resolved*, That the Secretary of the Interior be, and he is hereby, directed to transmit to the Senate the following information:

"First. A copy of the memorial of the Choctaw Nation of December 24, 1889, relative to the Mississippi Choctaws.

"Second. Deposition of Greenwood Leflore, ex-chief of

the Choctaw Nation, of February 24, 1843, before United States Commissioners Claiborne and Graves, relative to importance of the fourteenth article of the treaty of 1830.

"Third. Whether or not the Choctaws entitled to remain in Mississippi by the fourteenth article were reported by United States Commissioners Murray and Vroom to the President of the United States on July 31, 1838, as having been in a great number of cases forced to remove from the reservations granted them by the fourteenth article.

"Fourth. Whether or not the Mississippi Choctaws were parties to any subsequent Choctaw treaty, or have ever executed a relinquishment of their right of Choctaw citizenship."

In response thereto I transmit herewith copy of a communication of 15th instant from the Commissioner of Indian Affairs and accompanying papers.

As to the question of whether or not the Mississippi Choctaws were parties to any subsequent treaty to that of 1830, or have ever executed a relinquishment of their rights of Choctaw citizenship, the Commissioner says that four treaties in which the Choctaw Nation has been interested have been entered into since that of 1830, but that he cannot find in any of them anything to indicate whether the Choctaws in Mississippi were a party to any of them as a distinct faction or otherwise; neither does he find any provision by which the Choctaw Indians in Mississippi relinquish any rights of Choctaw citizenship they may have acquired under the fourteenth article of 1830, or otherwise.

Very respectfully,

D. R. FRANCIS,
Secretary.

THE PRESIDENT OF THE SENATE.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, February 15, 1897.

SIR: I am in receipt, by Department reference for immediate report, of a resolution of the Senate calling for certain

information relative to the Choctaws in Mississippi, as follows:

"*Resolved*, That the Secretary of the Interior be, and he is hereby, directed to transmit to the Senate the following information:

"First. A copy of the memorial of the Choctaw Nation of December 24, 1889, relative to the Mississippi Choctaws.

"Second. Deposition of Greenwood Leflore, ex-chief of the Choctaw Nation, of February 24, 1843, before United States Commissioners Claiborne and Graves, relative to importance of the fourteenth article of the treaty of 1830.

"Third. Whether or not the Choctaws entitled to remain in Mississippi by the fourteenth article were reported by United States Commissioners Murray and Vroom to the President of the United States on July 31, 1838, as having been in a great number of cases forced to remove from the reservations granted them by the fourteenth article.

"Fourth. Whether or not the Mississippi Choctaws were parties to any subsequent Choctaw treaty or have ever executed a relinquishment of their rights of Choctaw citizenship."

In reply I have the honor to inclose a copy of the memorial of the Choctaw Nation adopted by the legislature of that Nation and approved by its principal chief on December 24, 1889, said memorial relating to the Mississippi Choctaws.

I also inclose a copy of the deposition of Greenwood Leflore, ex-chief of the Choctaw Nation, taken on February 24, 1843, before United States Commissioners John F. H. Claiborne and Ralph Graves, relative to the importance of the fourteenth article of the Choctaw treaty of 1830 (7 Stat. L., 333).

I also inclose an excerpt from a report made by United States Commissioners J. Murray and P. D. Vroom to the President of the United States on July 31, 1838, in which they state that in a great number of cases Choctaws in Mississippi were forced to remove from reservations granted them under the fourteenth article of the treaty above mentioned. These last two named copies are made from the

printed record of the Court of Claims in Case No. 12742, "The Choctaw Nation of Indians v. The United States."

On account of the limited time within which I have to make this report, I have not been able to search the files of this office for the original of the report of the Commissioners from which these copies are taken.

As to the question of whether or not the Mississippi Choctaws were parties to any subsequent treaty to that of 1830, or have ever executed a relinquishment of their rights of Choctaw citizenship, I have to state that four treaties in which the Choctaw Nation has been interested have been entered into since that of 1830, as follows:

Treaty of 1837 (11 Stat. L., 573), by which the Chickasaws were permitted to form a district in the Choctaw country in the Indian Territory, and certain adjustments of rights between the two nations in the lands ceded to the Choctaws prior thereto were accomplished.

The treaty of November 4, 1854 (10 Stat. L., 1116), by which the boundary line between the Choctaw and Chickasaw districts in the Choctaw Nation was provided to be run.

The treaty of 1855 (11 Stat. L., 611), entered into for the purpose of readjusting the relations between the Choctaw and Chickasaw Nations, and the treaty of 1866 (14 Stat. L., 769), readjusting the relations of the Choctaw and Chickasaw Nations with the United States after the civil war.

There is nothing that I can find in any of these treaties to indicate whether the Choctaws in Mississippi were a party to any of them as a distinct faction or otherwise. These treaties were negotiated with the Choctaw and Chickasaw nations as bodies politic, and there is no recognition of any separate factions of either of said nations.

Neither do I find any provision in any of said treaties by which the Choctaw Indians in Mississippi relinquish any rights of Choctaw citizenship they may have acquired under the fourteenth article of 1830 or otherwise.

Very respectfully, your obedient servant,

THOS. P. SMITH, *Acting Commissioner.*

THE SECRETARY OF THE INTERIOR.

A MEMORIAL TO THE CONGRESS OF THE UNITED STATES

Whereas there are large numbers of Choctaws yet in the States of Mississippi and Louisiana who are entitled to all the rights and privileges of citizenship in the Choctaw Nation; and

Whereas they are denied all rights of citizenship in said States; and

Whereas they are too poor to immigrate themselves into the Choctaw Nation: Therefore,

Be it resolved by the general council of the Choctaw Nation assembled, That the United States Government is hereby requested to make provision for the emigration of said Choctaws from said States to the Choctaw Nation.

The national secretary is hereby instructed to furnish a certified copy of this memorial each to the Speaker of the House of Representatives of the United States, the President of the Senate of the United States, and the Commissioner of Indians Affairs, with the request that they do all they can to secure the accomplishment of the object of this memorial; and this resolution shall take effect and be in force from and after its passage.

Approved December 24, 1889.

B. F. SMALLWOOD, P. C. C. N.

This is to certify that the foregoing is a true and correct copy of the resolution of the general council of the Choctaw Nation passed and approved in extra session in December, 1889.

Witness my hand and the great seal of the Choctaw Nation this 30th day of December, A. D. 1889.

[SEAL]

J. B. JACKSON,

National Secretary Choctaw Nation.

BOARD OF CHOCTAW COMMISSIONERS,
Hopahka, February 24, 1843.

Direct interrogatories to be propounded to Greenwood Leflore, a witness on the part of the United States, sum-

moned at the instance of Messrs. Poindexter and Kirksey, on their suggestion that many of the claims presented by Choctaws for the consideration of this Board are fraudulent and void, to be used as evidence in the investigation of said claims.

First interrogatory. Have you any interest whatever, either as claimant, agent of claimants, or otherwise, in any claims under the fourteenth and nineteenth articles of the treaty of Dancing Rabbit Creek, which were presented before the former Board of Commissioners, or which have been presented or are to be presented for the consideration of this Board?

Second interrogatory. Do you know of any frauds committed or attempted to be committed upon the Government of the United States by any Indian or class of Indians or their agents in cases of such claims?

Third interrogatory. Do you know or have you heard of any Indian who has ever removed to the Choctaw country west of Mississippi and has since returned to the country ceded by the treaty of 1830 and is now residing here? If you do, give us his name, and describe him so particularly, if you can, that this Board may be able to recognize him should he come before them in person; and if any such person be dead give us his name and the names of his family and relations, so that a claim in behalf of his heirs may be detected.

Fourth interrogatory. Do you know how many Indians or heads of families there were who applied or offered to apply for the benefit of the fourteenth article of the treaty?

Fifth interrogatory. Were you not one of the chiefs who negotiated this treaty on the part of the Choctaws, and did you not make yourself acquainted with the extent of the benefits realized by your people from most of its provisions?

JOHN F. H. CLAIBORNE,
RALPH GRAVES,
Commissioners.

The answers of Greenwood Leflore to the interrogations propounded on his direct examination before the Board

of Commissioners sitting at Hopahker, as a witness on the part of the United States, summoned at the instance of Messrs. Poindexter and Kirksey, on a suggestion that many of the claims presented by Choctaws for the consideration of this Board are fraudulent and void, to be used as evidence in the investigation of said claims.

To the first interrogatory, I answer that I have no interest whatever in any claims under the fourteenth and nineteenth articles of the treaty of Dancing Rabbit Creek, which were presented before the former Board of Commissioners, or which have been presented or are to be presented for the consideration of this Board. I was provided for by the supplement of the treaty, and have received from Government a patent for my land. I was also the purchaser of two or three small reservations under the nineteenth article, about which there has never been any difficulty. I have never had anything to do with any claims under the fourteenth article, nor with any under the nineteenth article, which would come before this Board.

To the second interrogatory, I answer that I do not know of any frauds committed or attempted to be committed upon the Government of the United States by any Indian or class of Indians or their agents in cases of such claims.

To the third interrogatory, I answer that I do not know, nor have I ever heard, so far as I can now recollect, of any persons who ever removed to the Choctaw country west of Mississippi and have since returned to the country ceded by the treaty of 1830, and are now residing here except John F. Price, William Leflore and Anthony Turnbull. The first is a white man who had a Choctaw family; the second is my brother, and the third is a mixed-blood Choctaw. The first never made a claim for land, not being entitled to a reservation under any provision of the treaty, and the other two were provided for, one by the supplement, and the other by the nineteenth article, had their lands reserved, and sold them before their emigration west. I can recollect no others, and do not believe I ever heard of any others, and none of them can be claimants before the present board.

To the fourth interrogatory, I answer that I do not know

how many Indians or heads of families there were who applied or offered to apply for the benefit of the fourteenth article of the treaty.

To the fifth interrogatory I answer that I was one of the chiefs who negotiated this treaty on the part of the Choctaws, and am sorry to say that the benefits realized from it by my people were by no means equal to what I had a right to expect, nor to what they were justly entitled by the stipulations of the treaty on the part of the Government. The treaty was made at the urgent solicitations of the commissioners of the Government, and upon their abundant assurances that its stipulations would be faithfully carried out.

Confiding in these assurances and in the honor of Government to comply with the treaty, if it should be ratified at Washington, and conceiving it, under the circumstances, a measure of policy, if not of necessity, so far as the Choctaws were concerned, I urged it upon my people in the face of a strong opposition, which I finally determined, if possible, to remove by suggestion the insertion of the fourteenth article. This article was accordingly inserted, and believing it removed the principal objection to the treaty, I signed it myself and procured for it the support of many who were previously hesitating and undetermined. After the treaty was ratified I was active in urging forward the emigration of the people, and induced most of those in the part of my district where I resided to remove west. I think there were very few in the vicinity of my residence who applied for the benefit of the fourteenth article, and the most of them, I think, were duly registered and got their lands reserved.

This article was inserted to satisfy those in the southern part of my district and other parts of the Choctaw country who were opposed to the treaty and were inimical to me from an impression which prevailed among them that I wished to sell their country and force them to go west. After the treaty I did not consider myself any longer chief, and as I was engaged in preparing the people for the first emigration, and actually accompanied it, my intercourse with the Indians was confined to those in my part of the

country who sustained me in my course and were preparing to remove west, and I never troubled myself about the course pursued by those who had been opposed to my measures, had rejected my advice and were determined to remain in the ceded country. I do not, of course, know how many of them applied for the benefit of the fourteenth article.

Before closing my answer to this interrogatory I think it proper to state that about three years after the treaty I was present at Columbus during the excitement which arose there at the time of the land sales about the contingent locations of the fourteenth article claimants, and hearing a remark made by one of the agents of these claimants in a public speech to a large assembly of people, charging the chiefs who had made this treaty with bribery and corruption, I arose after he sat down and retorted the charge of fraud in as severe language as I could command. I was excited, and might have said more than was proper; but I felt, in the absence of any positive knowledge on the subject, that I had a right to impute any motives to one who could make such a serious and unfounded charge affecting my character as one of the chiefs who had been mainly instrumental in making the treaty. I knew that the locating agent, who lived in my section of country, had been furnished with a list containing but few names of persons registered under the fourteenth article of the treaty, but did not at that time know that many had applied to the registering agent for the benefit of this article whose applications had been rejected.

I have never since then taken any pains to inform myself particularly about their claims, and I do not know how many received the benefit of this article, or, being entitled to the benefit of it, failed to realize it. I would also add that the commissioners on the part of the United States went to the ground at Dancing Rabbit Creek much prejudiced against me, and would have no intercourse with me. They believed they could make a treaty with the other chiefs without my aid, and attempted to do so. After ten or twelve days of fruitless negotiation with them they failed entirely to make any treaty. The commissioners then came

to me and made many apologies for their neglect of me, saying they had been deceived and misled in regard to me by many misrepresentations, and then solicited me to enter into negotiations with them. I then told them if they would embrace in the treaty such provisions and articles which I suggested, the fourteenth article being one of them, I would undertake to make a treaty in two days. They agreed to the articles I suggested, and in twenty-four hours I had the treaty made.

GREENWOOD LEFLORE.

Sworn to and subscribed before us, at Hopahka, this 24th February, 1843.

JOHN F. H. CLAIBORNE,
RALPH GRAVES.

To the President of the United States.

SIR: * * * In all cases where the claimant has been actually expelled from his possession within the five years, or in which the land he occupied had been sold by the Government and surrendered to the purchaser, or where the claimant died in possession, the board have considered the cases as standing on the same ground as cases of continued residence, and have allowed them.

It is proper also to state that since the board received a copy of the supplemental law they are not aware that any case has been presented to them in which the claimant has removed west of the Mississippi; a few such cases had been heard before, and, as they were upon the records, the board have thought it proper to report them with the rest.

There are many cases also in which claimants have removed from the lands occupied by them at the time of the treaty in consequence of the settlement of the whites in their neighborhood; this and the consequences naturally resulting from it, and the proofs offered of its effects upon their minds, have induced the board to recommend such cases to Congress for allowance.

The Choctaw Indians are shy and reserved in their intercourse with the whites, and do not readily mix with them;

it is proved in a great number of cases that they have been most wantonly abused and ill treated by them, and that they could not live in peace in the same neighborhood. The large stocks of cattle and hogs introduced by the white settlers destroyed their crops, and their houses and cabins were torn down, burned, or taken possession of by them when they left home on their necessary hunting expeditions or to seek employment in picking cotton, etc. Under these circumstances they were compelled in a great number of cases to remove.

It is in proof also that many removed in consequence of reports circulated among them that the lands occupied by them had been sold by the Government, and when it was impossible for them to ascertain the truth or falsehood of such reports. They well knew, however, from bitter experience, that whether true or false, they were at the mercy of their white neighbors. The instances are not rare, as the evidence abundantly shows, in which families have been wantonly driven from their homes, and have for several years been wanderers, living about in all seasons in open camps, and seeking a precarious subsistence, which scarcely sufficed to keep them alive.

* * * * *

All of which is respectfully submitted.

J. MURRAY.

P. D. VROOM.

WASHINGTON CITY, July 31, 1838.

HOUSE OF REPRESENTATIVES
55TH CONGRESS,
2d Session

DOCUMENT
No. 274

REPORT OF THE COMMISSION TO THE FIVE CIVILIZED TRIBES

LETTER

from

THE SECRETARY OF THE INTERIOR

Transmitting

A Report of the Commission to the Five Civilized Tribes
Relative to the Mississippi Choctaws

FEBRUARY 3, 1898.—Referred to the Committee on Indian
Affairs and ordered to be printed.

DEPARTMENT OF THE INTERIOR,
Washington, February 2, 1898.

SIR: I have the honor to transmit herewith a copy of
a report of the Commission to the Five Civilized Tribes,
relative to the Mississippi Choctaws, made in pursuance
of the following provision contained in the Indian appro-
priation act of June 7, 1897:

That the Commission appointed to negotiate with the
Five Civilized Tribes in the Indian Territory shall examine
and report to Congress whether the Mississippi Choctaws
under their treaties are not entitled to all the rights of Choc-
taw citizenship, except an interest in the Choctaw annuities.

Very respectfully,

C. N. BLISS, *Secretary.*

The SPEAKER OF THE HOUSE OF REPRESENTATIVES.

REPORT OF THE COMMISSION TO THE FIVE CIVILIZED TRIBES
UPON THE QUESTION "WHETHER THE MISSISSIPPI CHOCTAW
TAWS UNDER THEIR TREATIES ARE NOT ENTITLED TO ALL
THE RIGHTS OF CHOCTAW CITIZENSHIP, EXCEPT AN INTEREST
IN THE CHOCTAW ANNUITIES," REQUIRED BY ACT
OF CONGRESS, APPROVED JUNE 7, 1897.

To the Congress of the United States:

The Commission to the Five Civilized Tribes were required by act approved June 7, 1897, to—

Examine and report to Congress whether the Mississippi Choctaws under their treaties are not entitled to all the rights of Choctaw citizenship, except an interest in the Choctaw annuities.

The commission has attended to that duty, and make the following

REPORT

The Mississippi Choctaws are the descendants of those Choctaw Indians who declined to remove to the Indian Territory with the tribe under the provisions of the treaty made with the United States September 27, 1830, under which the Choctaws obtained their present reservation in the Indian Territory. There has never been a census taken of them, but they are estimated to number at the present time about twelve hundred. These are represented to be a poor and feeble band, somewhat scattered in different parts of the State of Mississippi, but located mostly in the counties of Neshoba, Newton, Leake, Scott and Winston. They claim the right to continue their residence and political status in Mississippi as they and those from whom they descended have done for sixty-five years, and still are entitled to enjoy all the rights of Choctaw citizenship except to share in the Choctaw annuities. This claim is based on

the fourteenth article of said treaty, which is in these words:

ARTICLE XIV. Each Choctaw head of a family being desirous to remain and become a citizen of the States shall be permitted to do so, by signifying his intention to the agent within six months from the ratification of this treaty, and he or she shall thereupon be entitled to a reservation of one section of six hundred and forty acres of land, to be bounded by sectional lines of survey; in like manner shall be entitled to one-half that quantity for each unmarried child which is living with him over ten years of age; and a quarter section to such child as may be under ten years of age, to adjoin the location of the parent. If they reside upon said lands intending to become citizens of States for five years after the ratification of this treaty, in that case a grant in fee simple shall issue; said reservation shall include the present improvement of the head of the family, or a portion of it. Persons who claim under this article shall not lose the privilege of a Choctaw citizen, but if they ever remove are not entitled to any portion of the Choctaw annuity.

What their political status is in the State of Mississippi is defined in this fourteenth article of the treaty. Their ancestors, each, was to signify, within six months after the ratification of the treaty, his desire to remain and become a citizen of the States, which would entitle them to 640 acres of land and a less amount to each member of his family, and after a residence on the same of five years, with intent to become a citizen, are then entitled to a patent in fee, and are thereby made citizens of the State. Their ancestors having done this, they claim, under the concluding clause of said article, that their ancestors could and they now can continue such citizenship and residence in Mississippi and be still entitled to all the rights of a Choctaw citizen in the tribal property of said nation in the

Indian Territory, except their annuities. This clause upon which the claim rests is in these words:

Persons who claim under this article shall not lose the privilege of a Choctaw citizen, but if they ever remove are not to be entitled to any portion of the Choctaw annuity.

But this construction is in direct conflict with the very purpose for which the treaty was made, and with the nature of the title to the lands in the territory secured to the Choctaws by it, and to the whole structure and administration of their government ever since under it.

No fact is better established than this, that the leading motive, if not the only one, on the part of the United States, was to get the Choctaws out of Mississippi and into what is now the Indian Territory. They accordingly provided in the second article of the treaty, among other things, that the Choctaws should *live on the land* ceded to them by it in the Indian Territory. That article is in these words:

ARTICLE 2. The United States under a grant specially to be made by the President of the U. S. shall cause to be conveyed to the Choctaw Nation a tract of country west of the Mississippi River, in fee simple, to them and their descendants, to inure to them while they shall exist as a nation and live on it (here follows a description of the land). The grant to be executed as soon as the present treaty shall be ratified.

And the Choctaws agree in the third article to remove *all* their people to this territory during the years 1831, 1832 and 1833.

Now, to construe the concluding clause of the fourteenth article to mean an offer to those who refuse to go with their brethren to the new territory an equal share in the new lands with those who go and the additional fee simple

of 640 acres of land in Mississippi and citizenship if they do not go is to offer a bounty to those who refuse to go, and would defeat the very purpose of the treaty. Not one would have gone when offered so much better terms for staying. It is well known that the Choctaws were very reluctant to enter into this treaty at all, because a portion of them—the ancestors of these claimants—refused to leave with the main body, and the treaty was not executed till the provisions of the fourteenth article were made for those unwilling to leave with their brethren. But the United States did not cease its original purpose to secure the removal of them all to the new country, even those provided for in the fourteenth article. They, therefore, inserted the concluding clause to that article to the effect of a continuing offer and pledge, that if they did ever "*remove*"—that is, if they ever changed their minds and concluded to remove—the fact that they had been freeholders and citizens of Mississippi should not bar them out of Choctaw citizenship, but that they should share like all the rest in everything but the annuities. Thus construed the clause is a standing inducement to those Indians to remove in accordance with the purpose of the treaty instead of a standing bounty to remain and thus thwart that purpose.

In addition to the condition which entered into the title that the grantees must "live on it" or lose it, the nature of the title was such that these claimants could derive no benefit from it without living on it, and by remaining in Mississippi it would be worthless to them. It is a territory in common, and has been held as such from that day, 1830, till now. Now, no tenant in common, who voluntarily leaves the common property to the occupancy of his cotenants, can ever claim of them any of the fruits of its use. So that these Mississippi Choctaws, if they are co

tenants with the resident Choctaws in these lands in the Indian Territory, must first go there and occupy them with their cotenants or forego any use of them.

Another condition of this title is that the grantees shall not only "live upon it," but if the Choctaw Nation ceases to exist the title is lost. If all the Choctaws should follow the example of these Mississippi Choctaws and remain residents and citizens of Mississippi, it would *ipso facto* cease to exist as a nation and the title be lost. It is impossible to conceive that the Choctaw Nation itself, as well as the United States, entered into this fourteenth article with any intention of enabling them so to do.

As further evidence that both parties to this treaty understood that they had created a title to be held in common by the members of the tribe alone, in which no one not a member could have any interest, the United States and the Choctaws entered into a treaty in 1855 in respect to the title to those lands (U. S. Stats., 11, p. 612), the first article of which is in these words:

ARTICLE I. And pursuant to an act of Congress approved May 28, 1830, the United States do hereby forever secure and guarantee the lands embraced within the said limits to the members of the Choctaw and Chickasaw tribes, their heirs and successors, to be held in common, so that each and every member of either tribe shall have an equal, undivided interest in the whole: *Provided, however,* No part thereof shall ever be sold without the consent of both tribes, and that said lands shall revert to the United States if said Indians and their heirs become extinct or abandon the same.

Although it is true that any vested right of the Mississippi Choctaws in this land could not be affected by any treaty to which they were not a party, attention is called to this article for the double purpose of showing that both

the United States and the Choctaw Nation have from the beginning held that the title has always been in the members of the tribe alone, and is now so fixed that no one else but members can share in it. The treaty uses the same language in the outset as is used in the treaty of 1830, containing the fourteenth article, on which the present claim rests. It says, like that treaty, that it is entered into "pursuant to an act of Congress approved May 28, 1830," and then declares that—

the United States do hereby forever secure and guarantee the lands embraced within the said limits to the members of the Choctaw and Chickasaw tribes, their heirs and successors, to be held in common, so that each and every member of either tribe shall have an equal, undivided interest in the whole: *Provided, however, No part thereof shall ever be sold without the consent of both tribes, and that said land shall revert to the United States if said Indians and their heirs become extinct or abandon the same.*

There can be no longer doubt that the present title is in the members of the tribes alone, and that the United States has pledged itself to so maintain it, and that it so does in the belief of both parties to the treaty that such was the title from the beginning. No man can, therefore, as the title now stands, have any interest in these lands unless he is a member of one of these tribes.

Now, it has been a law of the Choctaw Nation from the beginning of its existence, recognized by the Supreme Court and by Congress, that no man can be a citizen of that nation who does not reside in it and assume the obligations of such citizenship before he can enjoy its privileges. To "enjoy the privileges of a Choctaw citizen" one must be a Choctaw citizen.

If this land should be ultimately allotted, any allotment to other than a citizen would come in direct conflict not only

with the terms of the treaty title lost to the whole system of the Choctaw government from the beginning. By the treaty, the allottee must be a member of either the Choctaw or Chickasaw tribes. He can, being a stranger, neither occupy nor sell his allotment, for by the treaty all strangers are to be kept out of the territory, and the land is to be sold to no one except with the consent of both tribes.

This historical review of the acquisition of this Territory by the Choctaw Nation, and its subsequent legal relations to it, makes it clear, in the opinion of this commission, that the Mississippi Choctaws are not, under their treaties, entitled to "all the rights of Choctaw citizenship except an interest in the Choctaw annuities," and still continue their residence and citizenship in the State of Mississippi.

What, then, are "the privileges of a Choctaw citizen," secured to them by the fourteenth article of the treaty of 1830? That article, after having secured to those unwilling to remove with their brethren to the Indian Territory 640 acres of land and enrollment and citizenship in the State of Mississippi, added this further clause:

Persons who claim under this article shall not lose the privileges of a Choctaw citizen, but if they ever remove are not to be entitled to any portion of the Choctaw annuity.

The commission are of the opinion that this clause was intended to offer a further inducement to those Indians to follow at some future time their brethren and join them in their new home, and that the true construction of it is that the door of admission shall be kept open to them, and if they ever remove this stay and citizenship in Mississippi shall not bar them out, but that, notwithstanding it, they shall be admitted to all the privileges of Choctaw citizenship equally with all others, save only a share in their

annuity. This construction finds further corroboration in the treaty of 1866 (14th Statutes at Large) between the United States and the Choctaws and Chickasaws concerning the title to this same territory. In this treaty, for the first time, the possibility of an allotment of these lands in severalty to the members of the tribes at some time in the future was recognized. It was, therefore, provided in this treaty that whenever the tribes desired it such allotment among their members should take place, and at great detail the manner in which it was to be done was set forth. The treaty then provided that before it did take place notice should be given—

not only in the Choctaw and Chickasaw Nations, but by publication in newspapers printed in the States of Mississippi and Tennessee, Louisiana, Texas, Arkansas and Alabama, to the end that such Choctaws and Chickasaws as yet remain outside of the Choctaw and Chickasaw Nations may be informed and have opportunity to exercise the rights hereby given to resident Choctaws and Chickasaws: *Provided*, That before any such absent Choctaw or Chickasaw shall be permitted to select for him or herself, or others, as hereinafter provided, he or she shall satisfy the register of the land office of his or her intention, or the intention of the party for whom the selection is to be made, to become bona fide resident in the said nation within five years from the time of selection; and should the said absentee fail to remove into said nation, and occupy and commence an improvement on the land selected within the time aforesaid, the said selection shall be canceled, and the land shall thereafter be discharged from all claim on account thereof.

There can be no doubt that this provision was inserted for the special benefit of those claiming to enjoy the rights of a Choctaw citizen under this fourteenth article of the treaty of 1830, many of those Choctaws having wandered away from Mississippi into the other States mentioned.

It was a notice to them that these lands were about to be allotted to *members* of the tribes, and if they desired to avail themselves of a share in the allotment they must make themselves such members by coming from "outside" and join their brethren in the common citizenship of the nation.

The terms upon which each applicant can avail himself of this opportunity are clear and unequivocal. He must satisfy the register of his intention to become a bona fide resident in the Territory within five years of the date of his application before he can select his allotment. And a failure to remove into said nation and to occupy and commence improvement on the land so occupied, within the time specified, forfeits altogether the selection.

This proviso needs no explanation. The United States and the Choctaws have affixed it to the title, and those claiming the benefit of the 14th article must conform to it or lose their rights.

It follows, therefore, from this reasoning, as well as from the historical review already recited, and the nature of the title itself, as well as all stipulations concerning it in the treaties between the United States and the Choctaw Nation, that to avail himself of the "privileges of a Choctaw citizen" any person claiming to be a descendant of those Choctaws who were provided for in the fourteenth article of the treaty of 1830 must first show the fact that he is such descendant, and has in good faith joined his brethren in the Territory with the intent to become one of the citizens of the nation. Having done so, such person has a right to be enrolled as a Choctaw citizen and to claim all the privileges of such a citizen, except to a share in the annuities. And that otherwise he cannot claim as a right the "privilege of a Choctaw citizen."

To the claim, as thus defined, the Choctaw Nation has

always acceded, and has manifested in many ways its willingness to take into its citizenship any one or all of the Mississippi Choctaws who would leave their residence and citizenship in that State and join in good faith their brethren in the Territory, with participation in all the privileges of such citizenship, save only a share in their annuities, for which an equivalent has been given in the grant of land and citizenship in Mississippi.

The national council, in view of the poverty and inability of these Choctaws to remove at their own expense to the Territory, memorialized Congress on December 9, 1889, to make provision for their removal, by the adoption of the following resolution:

Whereas there are large numbers of Choctaws yet in the States of Mississippi and Louisiana who are entitled to all the rights and privileges of citizenship in the Choctaw Nation; and

Whereas they are denied all rights of citizenship in said State; and

Whereas they are too poor to immigrate themselves into the Choctaw Nation: Therefore,

Be it resolved by the General Council of the Choctaw Nation assembled, That the United States Government is hereby requested to make provision for the emigration of said Choctaws from said States to the Choctaw Nation, etc.

It is a significant fact that this claim on the part of the Mississippi Choctaws to all the privileges of a citizen in the Choctaw Nation, and still retain their residence and citizenship in the State of Mississippi, is a very recent one. There is no evidence known to the commission that the early Mississippi Choctaws ever made such a claim. In later years the Choctaws and Chickasaws have sold at different times large portions of their territory to the United States, and the proceeds, amounting in the aggregate to

several millions of dollars, have been distributed *per capita* among the Choctaw and Chickasaw citizens. If this claim as now presented is the correct one, these Mississippi Choctaws were entitled to their *per capita* share in all the money equally with all other citizens of the nation, yet not a dollar of it was ever paid to them, or claimed by them.

This claim to participate in the privileges of a Choctaw citizen and still retain a residence and citizenship in Mississippi has recently come before the United States Court, in the third district in the Indian Territory, in the case of Jack Amos *et al. vs. The Choctaw Nation*, No. 158 on the docket of that court. The case was an appeal of Mississippi Choctaws from a refusal of this commission to place them on the rolls of Choctaw citizenship. The court, Judge Wm. H. H. Clayton, overruled the appeal and confirmed the judgment of this commission, denying such enrollment, in a very elaborate and exhaustive opinion.

If, in accordance with this conclusion of the commission, these Mississippi Choctaws have the right at any time to remove to the Indian Territory, and, joining their brethren there, claim participation in all the privileges of a Choctaw citizen, save participation in their annuities, still, if any person presents himself claiming this right he must be required by some tribunal to prove the fact that he is a descendant of some one of those Indians who originally availed themselves of and conformed to the requirements of the fourteenth article of the treaty of 1830. The time for making application to this commission to be enrolled as a Choctaw citizen has expired. It would be necessary therefore, to extend by law the time for persons claiming this right to make application and be heard by this commission, or to create a new tribunal for that purpose.

In conclusion, it seems to the commission that the importance of a correct decision of this question, both to the

Mississippi Choctaws and the Choctaw Nation, justifies a provision for a judicial decision in a case provided for that purpose. They therefore suggest that, in proper form, jurisdiction may be given the Court of Claims to pass judicially upon this question in a suit brought for that purpose by either of the interested parties.

Respectfully submitted.

HENRY L. DAWES,
TAMS BIXBY,
FRANK C. ARMSTRONG,
A. S. McKENNON,
Commissioners.

Washington, D. C., January 28, 1898.

HOUSE OF REPRESENTATIVES

56TH CONGRESS
1st Session

DOCUMENT
No. 426

MISSISSIPPI CHOCTAWS

FEBRUARY 13, 1900.—Ordered to be printed.

Mr. WILLIAMS, of Mississippi, introduced the following

PETITION OF THE MISSISSIPPI CHOCTAWS

February 7, 1900.

*To the honorable the Senate and House of Representatives
of the United States in Congress assembled:*

Your humble petitioners are full-blood Choctaw Indians, speaking the Choctaw language, citizens of the Choctaw Nation, residing in Mississippi.

They are entitled to every privilege of a Choctaw citizen.

except the Choctaw annuity, under the treaty of 1830. This claim is based on the fourteenth article of the treaty made by us with the United States September 27, 1830, which is in these words:

ART. 14. Each Choctaw head of a family, being desirous to remain and become a citizen of the States, shall be permitted to do so by signifying his intention to the agent within six months from the ratification of this treaty, and he or she shall thereupon be entitled to a reservation of one section of six hundred and forty acres of land, to be bounded by sectional lines of survey; in like manner shall be entitled to one-half that quantity for each unmarried child which is living with him over ten years of age; and a quarter-section to such child as may be under ten years of age, to adjoin the location of the parents. If they reside upon said lands, intending to become citizens of States, for five years after the ratification of this treaty, in that case a grant in fee simple shall issue. Said reservation shall include the present improvement of the head of the family, or a portion of it. Persons who claim under this article *shall not lose the privilege of a Choctaw citizen*, but if they ever "remove are not entitled to any portion of the Choctaw annuity."

We bought and paid for the right of residence in Mississippi as well as the privilege of Choctaw citizenship, reserved to us in that treaty.

Our rights are properly set forth in a report from the Committee on Indian Affairs of the House of Representatives, which is made Exhibit 1 hereto.

Our brothers of the Choctaw Nation memorialized Congress December 4, 1889, declaring that we were entitled to all the rights and privileges of citizenship in the Choctaw Nation. (See p. 3, Exhibit 1.)

The treaty of 1830 could not have been passed except

for the pledge to us in the fourteenth article. (See pp. 1 and 6, Exhibit 1.)

Congress on June 7, 1897, passed the following act, to wit:

That the commission appointed to negotiate with the Five Civilized Tribes in the Indian Territory shall examine and report to Congress whether the Mississippi Choctaws under their treaties are not entitled to all the rights of Choctaw citizenship except an interest in the Choctaw annuities.

On February 2, 1898, this report was made, containing the following words:

If, in accordance with this conclusion of the commission these Mississippi Choctaws have the right at any time to remove to the Indian Territory, and, joining their brethren there, claim participation in all the privileges of Choctaw citizens save participation in the annuities, still if any person presents himself claiming this right he must be required by some tribunal to prove the fact that he is a descendant of some one of those Indians who originally availed themselves of and conformed to the requirements of the fourteenth article of the treaty of 1830.

We feel deeply aggrieved that the treaty by which we retained "the privilege of a Choctaw citizen" should now be construed to mean "the privilege of acquiring the privilege of a Choctaw citizen by removal." This is a forced construction. It compels us to give up the right to "remain and become a citizen of the States" which we bought and paid for in the treaty of 1830.

On June 28, 1898, in the Curtis bill, Congress passed the following act, to wit:

Said commission shall have authority to determine the

identity of Choctaw Indians claiming rights in the Choctaw lands under article fourteen of the treaty between the United States and the Choctaw Nation, concluded September 27, 1830, and to that end may administer oaths, examine witnesses, and perform all other acts necessary thereto, and make report to the Secretary of the Interior.

On March, 10, 1899, the Commission to the Five Civilized Tribes reported a roll containing the names of most of our people under this direction of the act of Congress, and on August 10, 1899, the Secretary of the Interior decided that—

Prima facie, the persons appearing on said schedule, containing the names of the Mississippi Choctaws entitled to enrollment as adopted Indians, would be entitled to such enrollment, subject, however, to the final action of the Department when the final rolls shall be submitted by the commission for the approval of the Secretary. (Last paragraph, Exhibit 3.)

The only question and controversy as to our right is whether or not the fourteenth article requires us to give up the "privilege of the Choctaw citizen" or give up the right to "remain and become a citizen of the States." We bought both rights and now are required to give up one for the other. We must give up our Mississippi homes or give up our Choctaw rights, although we bought both and expressly retained both, by the plain language of the treaty. (See Exhibit 4.)

We petition Congress, first, to give us our rights by construing this treaty in our favor, for the reasons above set forth. The proposition is so simple we ought not to be compelled, poor as we are, to go into the courts, with the expense and delay incident to such a method of settlement. But in the event that Congress believes that there is any

reasonable doubt in the plain language of this treaty, then we petition Congress—

Second, to send us speedily to the courts, where this controversy may be settled without delay, and that while this suit is pending we shall have the right to exercise our right of selection as any other Choctaw citizens, subject to the final determination of the courts. We ask this for the reason that if we have these rights we ought not to be compelled to wait until every other citizen has exercised his choice, compelling us to receive only that which nobody else cares for.

As full-blood Choctaws, speaking the Choctaw language, and being very poor, we humbly pray the magnanimous consideration of the great Congress of the greatest organized people on earth.

Your humble and obedient servants,

THE MISSISSIPPI CHOCTAWS,

By C. F. WINTON.

LOGAN, DEMOND AND HARLEY,
Attorneys for Petitioners.

EXHIBIT 2

[House Document No. 274, Fifty-fifth Congress,
second session.]

DEPARTMENT OF THE INTERIOR,
Washington, February 2, 1898.

SIR: I have the honor to transmit herewith a copy of a report of the Commission to the Five Civilized Tribes, relative to the Mississippi Choctaws, made in pursuance of the following provision contained in the Indian appropriation act of June 7, 1897:

"That the commission appointed to negotiate with the Five Civilized Tribes in the Indian Territory shall examine and report to Congress whether the Mississippi Choctaws

under their treaties are not entitled to all the rights of Choctaw citizenship, except an interest in the Choctaw annuities."

Very respectfully,

C. N. Bliss, *Secretary*.

THE SPEAKER OF THE HOUSE OF REPRESENTATIVES.

REPORT OF THE COMMISSION TO THE FIVE CIVILIZED TRIBES UPON THE QUESTION, WHETHER THE MISSISSIPPI CHOCTAWS UNDER THEIR TREATIES ARE NOT ENTITLED TO ALL THE RIGHTS OF CHOCTAW CITIZENSHIP, EXCEPT AN INTEREST IN THE CHOCTAW ANNUITIES?" REQUIRED BY ACT OF CONGRESS, APPROVED JUNE 7, 1897.

To the Congress of the United States:

The Commission to the Five Civilized Tribes were required by act approved June 7, 1897, to—

"Examine and report to Congress whether the Mississippi Choctaws under their treaties are not entitled to all the rights of Choctaw citizenship, except an interest in the Choctaw annuities."

The commission has attended to that duty, and make the following

REPORT

The Mississippi Choctaws are the descendants of those Choctaw Indians who declined to remove to the Indian Territory with the tribe under the provisions of the treaty made with the United States September 27, 1830, under which the Choctaws obtained their present reservation in the Indian Territory. There has never been a census taken of them, but they are estimated to number at the present time about 1,200. These are represented to be a poor and feeble band, somewhat scattered in different parts of the State of Mississippi, but located mostly in the counties of Neshoba, Newton, Leake, Scott and Winston. They claim the right to continue their residence and political

status in Mississippi, as they and those from whom they descended have done for sixty-five years, and still are entitled to enjoy all the rights of Choctaw citizenship except to share in the Choctaw annuities. This claim is based on the fourteenth article of said treaty, which is in these words:

"ARTICLE XIV. Each Choctaw head of a family being desirous to remain and become a citizen of the States shall be permitted to do so, by signifying his intention to the agent within six months from the ratification of this treaty, and he or she shall thereupon be entitled to a reservation of one section of six hundred and forty acres of land, to be bounded by sectional lines of survey; in like manner shall be entitled to one-half that quantity for each unmarried child which is living with him over ten years of age; and a quarter section to such child as may be under ten years of age, to adjoin the location of the parent. If they reside upon said lands intending to become citizens of States for five years after the ratification of this treaty, in that case a grant in fee simple shall issue; said reservation shall include the present improvement of the head of the family, or a portion of it. Persons who claim under this article shall not lose the privilege of a Choctaw citizen, but if they ever remove are not entitled to any portion of the Choctaw annuity."

What their political status is in the State of Mississippi is defined in this fourteenth article of the treaty. Their ancestors, each, was to signify, within six months after the ratification of the treaty, his desire to remain and become a citizen of the States, which would entitle them to 640 acres of land and a less amount to each member of his family, and after a residence on the same of five years, with intent to become a citizen, are then entitled to a patent in fee, and are thereby made citizens of the States. Their ancestors having done this, they claim, under the concluding clause of said article, that their ancestors could and they now can continue such citizenship and residence in Mississippi and be still entitled to all the rights of a Choctaw citizen in the tribal property of said nation in the

Indian Territory, except their annuities. This clause upon which the claim rests is in these words:

"Persons who claim under this article shall not lose the privilege of a Choctaw citizen, but if they ever remove are not to be entitled to any portion of the Choctaw annuity."

But this construction is in direct conflict with the very purpose for which the treaty was made, and with the nature of the title to the lands in the territory secured to the Choctaws by it, and to the whole structure and administration of their government ever since under it.

No fact is better established than this, that the leading motive, if not the only one, on the part of the United States, was to get the Choctaws out of Mississippi and into what is now the Indian Territory. They accordingly provided in the second article of the treaty, among other things, that the Choctaws should *live on the land* ceded to them by it in the Indian Territory. That article is in these words:

"ARTICLE 2. The United States under a grant specially to be made by the President of the United States shall cause to be conveyed to the Choctaw Nation a tract of country west of the Mississippi River, in fee simple, to them and their descendants, to inure to them while they shall exist as a nation and live on it (here follows a description of the land). The grant to be executed as soon as the present treaty shall be ratified."

And the Choctaws agree in the third article to remove *all* their people to this territory during the years 1831, 1832 and 1833.

Now, to construe the concluding clause of the fourteenth article to mean an offer to those who refuse to go with their brethren to the new territory an equal share in the new lands with those who go, and the additional fee simple of 640 acres of land in Mississippi and citizenship if they do not go, is to offer a bounty to those who refuse to go, and would defeat the very purpose of the treaty. Not one would have gone when offered so much better terms for staying. It is well known that the Choctaws were very reluctant to enter into this treaty at all, because a portion of them—the ancestors of these claimants—refused to leave

with the main body, and the treaty was not executed till the provisions of the fourteenth article were made for those unwilling to leave with their brethren. But the United States did not cease its original purpose to secure the removal of them all to the new country, even those provided for in the fourteenth article. They therefore inserted the concluding clause to that article, to the effect of a continuing offer and pledge, that if they did ever "remove"—that is, if they ever changed their minds and concluded to remove—the fact that they had been freeholders and citizens of Mississippi should not bar them out of Choctaw citizenship, but that they should share like all the rest in everything but the annuities. Thus construed the clause is a standing inducement to those Indians to remove, in accordance with the purpose of the treaty, instead of a standing bounty to remain and thus thwart that purpose.

In addition to the condition which entered into the title that the grantees must "live on it" or lose it, the nature of the title was such that these claimants could derive no benefit from it without living on it, and by remaining in Mississippi it would be worthless to them. It is a territory in common, and has been held as such from that day, 1830, till now. Now no tenant in common, who voluntarily leaves the common property to the occupancy of his cotenants, can ever claim of them any of the fruits of its use. So that these Mississippi Choctaws, if they are cotenants with the resident Choctaws in these lands in the Indian Territory, must first go there and occupy them with their cotenants or forego any use of them.

Another condition of this title is that the grantees shall not only "live upon it," but if the Choctaw Nation ceases to exist the title is lost. If all the Choctaws should follow the example of these Mississippi Choctaws, and remain residents and citizens of Mississippi, it would *ipso facto* cease to exist as a nation and the title be lost. It is impossible to conceive that the Choctaw Nation itself, as well as the United States, entered into this fourteenth article with any intention of enabling them so to do.

As further evidence that both parties to this treaty understood that they had created a title to be held in common

by the members of the tribe alone, in which no one not a member could have any interest, the United States and the Choctaws entered into a treaty in 1855 in respect to the title to those lands (U. S. Stats., 11, p. 612), the first article of which is in these words:

"ARTICLE 1. And pursuant to an act of Congress approved May 28, 1830, the United States do hereby forever secure and guarantee the lands embraced within the said limits to the members of the Choctaw and Chickasaw tribes, their heirs and successors, to be held in common, so that each and every member of either tribe shall have an equal undivided interest in the whole: *Provided, however,* No part thereof shall ever be sold without the consent of both tribes and that said lands shall revert to the United States if said Indians and their heirs become extinct or abandon the same.

Although it is true that any vested right of the Mississippi Choctaws in this land could not be affected by any treaty to which they were not a party, attention is called to this article for the double purpose of showing that both the United States and the Choctaw Nation have from the beginning held that the title has always been in the members of the tribe alone and is now so fixed that no one else but members can share in it. The treaty uses the same language in the outset as is used in the treaty of 1830, containing the fourteenth article, on which the present claim rests. It says, like that treaty, that it is entered into "pursuant to an act of Congress approved May 28, 1830," and then declares that "the United States do hereby forever secure and guarantee the lands embraced within the said limits to the members of the Choctaw and Chickasaw tribes, their heirs and successors, to be held in common, so that each and every member of either tribe shall have an equal undivided interest in the whole: *Provided, however,* No part thereof shall ever be sold without the consent of both tribes and that said land shall revert to the United States if said Indians and their heirs become extinct or abandon the same."

There can be no longer doubt that the present title is in the members of the tribes alone and that the United States

has pledged itself to so maintain it, and that it does so in the belief of both parties to the treaty that such was the title from the beginning. No man can, therefore, as the title now stands, have any interest in these lands unless he is a member of one of these tribes.

Now, it has been a law of the Choctaw Nation from the beginning of its existence, recognized by the Supreme Court and by Congress, that no man can be a citizen of that nation who does not reside in it and assume the obligations of such citizenship before he can enjoy its privileges. To "enjoy the privileges of a Choctaw citizen" one must be a Choctaw citizen.

If this land should be ultimately allotted, any allotment to other than a citizen would come in direct conflict not only with the terms of the treaty title, but to the whole system of the Choctaw government from the beginning. By the treaty the allottee must be a member of either the Choctaw or Chickasaw tribes. He can, being a stranger, neither occupy nor sell his allotment, for by the treaty all strangers are to be kept out of the territory, and the land is to be sold to no one except with the consent of both tribes.

This historical review of the acquisition of this territory by the Choctaw Nation and its subsequent legal relations to it makes it clear, in the opinion of this commission, that the Mississippi Choctaws are not, under their treaties, entitled to "all the rights of Choctaw citizenship except an interest in the Choctaw annuities," and still continue their residence and citizenship in the State of Mississippi.

What, then, are "the privileges of a Choctaw citizen," secured to them by the fourteenth article of the treaty of 1830? That article, after having secured to those unwilling to remove with their brethren to the Indian Territory 640 acres of land an enrollment and citizenship in the State of Mississippi, added this further clause:

"Persons who claim under this article shall not lose the privileges of a Choctaw citizen, but if they ever remove are not to be entitled to any portion of the Choctaw annuity."

The commission are of the opinion that this clause was intended to offer a further inducement to those Indians to

follow at some future time their brethren and join them in their new home, and that the true construction of it is that the door of admission shall be kept open to them, and if they ever remove, this stay and citizenship in Mississippi shall not bar them out, but that, notwithstanding it, they shall be admitted to all the privileges of Choctaw citizenship equally with all others, save only a share in their annuity. This construction finds further corroboration in the treaty of 1866 (14 Stat. L.) between the United States and the Choctaws and Chickasaws concerning the title to this same territory. In this treaty, for the first time, the possibility of an allotment of these lands in severalty to the members of the tribes at some time in the future was recognized. It was therefore provided in this treaty that whenever the tribes desired it such allotment among their members should take place, and at great detail the manner in which it was to be done was set forth. The treaty then provided that before it did take place notice should be given "not only in the Choctaw and Chickasaw Nations, but by publication in newspapers printed in the States of Mississippi and Tennessee, Louisiana, Texas, Arkansas and Alabama, to the end that such Choctaws and Chickasaws as yet remain outside of the Choctaw and Chickasaw Nations may be informed and have opportunity to exercise the rights hereby given to resident Choctaws and Chickasaws: *Provided*, That before any such absent Choctaw or Chickasaw shall be permitted to select for him or herself, or others, as hereinafter provided, he or she shall satisfy the register of the land office of his or her intention, or the intention of the party for whom the selection is to be made, to become bona fide residents in the said nation within five years from the time of selection; and should the said absentee fail to remove into said nation, and occupy and commence an improvement on the land selected within the time aforesaid, the said selection shall be canceled, and the land shall thereafter be discharged from all claim on account thereof."

There can be no doubt that this provision was inserted for the special benefit of those claiming to enjoy the rights of a Choctaw citizen under this fourteenth article of the treaty

of 1830, many of those Choctaws having wandered away from Mississippi into the other States mentioned. It was a notice to them that these lands were about to be allotted to members of the tribes, and if they desired to avail themselves of a share of the allotment they must make themselves such members by coming from "outside" and join their brethren in the common citizenship of the nation.

The terms upon which each applicant can avail himself of this opportunity are clear and unequivocal. He must satisfy the register of his intention to become a bona fide resident in the Territory within five years of the date of his application before he can select his allotment. And a failure to remove into said nation and to occupy and commence improvement on the land so occupied, within the time specified, forfeits altogether the selection.

This proviso needs no explanation. The United States and the Choctaws have affixed it to the title, and those claiming the benefit of the fourteenth article must conform to it or lose their rights.

It follows, therefore, from this reasoning, as well as from the historical review already recited, and the nature of the title itself, as well as all stipulations concerning it in the treaties between the United States and the Choctaw Nation, that to avail himself of the "privileges of a Choctaw citizen" any person claiming to be a descendant of those Choctaws who were provided for in the fourteenth article of the treaty of 1830 must first show the fact that he is such descendant, and has in good faith joined his brethren in the Territory with the intent to become one of the citizens of the nation. Having done so, such person has a right to be enrolled as a Choctaw citizen and to claim all the privileges of such a citizen, except to a share in the annuities. And that otherwise he cannot claim as a right the "privilege of a Choctaw citizen."

To the claim, as thus defined, the Choctaw Nation has always acceded, and has manifested in many ways its willingness to take into its citizenship any one or all of the Mississippi Choctaws who would leave their residence and citizenship in that State and join in good faith their brethren in the Territory, with participation in all the privileges

of such citizenship, save only a share in their annuities, for which an equivalent has been given in the grant of land and citizenship in Mississippi.

The national council, in view of the poverty and inability of these Choctaws to remove at their own expense to the Territory, memorialized Congress on December 9, 1889, to make provision for their removal, by the adoption of the following resolution:

"Whereas there are large numbers of Choctaws yet in the States of Mississippi and Louisiana who are entitled to all the rights and privileges of citizenship in the Choctaw Nation; and

"Whereas they are denied all rights of citizenship in said States; and

"Whereas they are too poor to immigrate themselves into the Choctaw Nation: Therefore,

"Be it resolved by the General Council of the Choctaw Nation assembled, That the United States Government is hereby requested to make provision for the emigration of said Choctaws from said States to the Choctaw Nation, etc."

It is a significant fact that this claim on the part of the Mississippi Choctaws to all the privileges of a citizen in the Choctaw Nation, and still retain their residence and citizenship in the State of Mississippi, is a very recent one. There is no evidence known to the commission that the early Mississippi Choctaws ever made such a claim. In later years the Choctaws and Chickasaws have sold at different times large portions of their territory to the United States, and the proceeds, amounting in the aggregate to several millions of dollars, have been distributed per capita among the Choctaw and Chickasaw citizens. If this claim as now presented is the correct one, these Mississippi Choctaws were entitled to their per capita share in all the money equally with all other citizens of the nation, yet not a dollar of it was ever paid to them or claimed by them.

This claim to participate in the privileges of a Choctaw citizen and still retain a residence and citizenship in Mississippi has recently come before the United States Court in the third district in the Indian Territory in the case of *Jack Amos et al. v. The Choctaw Nation*, No. 158 on the

docket of that court. The case was an appeal of Mississippi Choctaws from a refusal of this commission to place them on the rolls of Choctaw citizenship. The court, Judge Wm. H. H. Clayton, overruled the appeal and confirmed the judgment of this commission, denying such enrollment in a very elaborate and exhaustive opinion.

If, in accordance with this conclusion of the commission, these Mississippi Choctaws have the right at any time to remove to the Indian Territory, and, joining their brethren there, claim participation in all the privileges of a Choctaw citizen, save participation in their annuities, still, if any person presents himself claiming this right he must be required by some tribunal to prove the fact that he is a descendant of some one of those Indians who originally availed themselves of and conformed to the requirements of the fourteenth article of the treaty of 1830. The time for making application to this commission to be enrolled as a Choctaw citizen has expired. It would be necessary, therefore, to extend by law the time for persons claiming this right to make application and be heard by this commission or to create a new tribunal for that purpose.

In conclusion, it seems to the commission that the importance of a correct decision of this question, both to the Mississippi Choctaws and the Choctaw Nation, justifies a provision for a judicial decision in a case provided for that purpose. They therefore suggest that, in proper form, jurisdiction may be given the Court of Claims to pass judicially upon this question in a suit brought for that purpose by either of the interested parties.

Respectfully submitted.

HENRY L. DAWES,
TAMS BIXBY,
FRANK C. ARMSTRONG,
A. S. McKENNON,
Commissioners.

WASHINGTON, D. C., January 28, 1898.

EXHIBIT 3

DEPARTMENT OF THE INTERIOR,
Washington, August 10, 1899.

SIR: The Department is in receipt of your communication of May 31, 1899, in which you state—

"In connection with the commission's report as to the identification of Mississippi Choctaws, forwarded this day, I have the honor to respectfully request a decision by the Department upon the following question:

"Are those persons whose names appear upon the schedule which accompanies the commission's report entitled to enrollment as Choctaw Indians and to participate in the distribution of tribal lands in Indian Territory upon their removal to the Choctaw Nation?"

On June 13th last the Acting Commissioner of Indian Affairs acknowledged the receipt of departmental letter of June 6, 1899, transmitting a report of the Commission to the Five Civilized Tribes (in duplicate) as to the identity of Choctaw Indians residing in Mississippi claiming rights in the Choctaw Nation under article 14 of the treaty between the United States and the Choctaw Nation, concluded September 27, 1830, as directed in section 21 of the act of Congress approved June 28, 1898 (30 Stat., 495), for the consideration of the Indian Office, report, and recommendation.

The acting commissioner quotes that part of section 21 relative to the matter as follows:

"Said commission shall have authority to determine the identity of Choctaw Indians claiming rights in the Choctaw lands under article 14 of the treaty between the United States and the Choctaw Nation, concluded September 27, 1830, and to that end may administer oaths, examine witnesses, and perform all other acts necessary thereto, and make report to the Secretary of the Interior."

And he states that under the provision above quoted—

"The Department is not given any jurisdiction to revise or in any way approve or disapprove the action of the commission, and the commission is given sole authority to deter-

mine the identity of the Indians in question. The situation appears to the office to be that the Commission to the Five Civilized Tribes under this clause was created a court of special jurisdiction to determine certain facts, and that from the judgment of the commission in these cases no appeal would lie to this Department, and that the Department has no duty to perform except to receive the report which the commission is required to make to the Secretary of the Interior."

The acting commissioner requested to be instructed by the Department "as to its understanding as to the purpose and intent of the law in this matter * * * that should the Department decide that it has authority under the law to review the action of the commission in identifying these people, there are no facts submitted with the reports and none of the evidence on which the commission acted is before the office, and it would be impossible for the office to give proper consideration to the case without having the whole record on which the commission acted before, and that if it is not necessary to review their action, the necessity for having this record in the office would be obviated."

Afterwards, on June 15th, the Department considered said communication from the action commissioner of the 13th of the same month, in which reference was made to the several statutory provisions relative to the duties of the commission, and also to the opinion of the Assistant Attorney-General, rendered March 17, 1899, and it was stated:

"When the rolls of said tribes shall have been completed and submitted to the Secretary for approval thereof, he will have authority, and it shall be his duty, under the authority above quoted, to see that any Mississippi Choctaws entitled to be enrolled is placed upon the roll and that anyone not entitled to be placed upon the roll whose name is found thereon shall be stricken therefrom."

And the commissioner was advised "that until the rolls are presented for approval no further action need be taken either by your (Indian) office or by the Department, unless some request therefor shall come from said commission."

On June 24th last the Commissioner of Indians Affairs inclosed said report, dated May 31, 1889, containing said

request to be advised concerning the rights of Mississippi Choctaws "upon their removal to the Choctaw Nation."

Reference is made by the commissioner to the provision contained in the act of June 7, 1898 (30 Stat., 62-83), which declares "that the commission appointed to negotiate with the Five Civilized Tribes in the Indian Territory shall examine and report to Congress whether the Mississippi Choctaws under their treaties are not entitled to all the rights of Choctaw citizenship, except an interest in the Choctaw annuities," and also to the report of said commission, dated January 28, 1898, under said provision, submitted to Congress, in which it is stated:

"It follows, therefore, from this reasoning, as well as from the historical review already cited and the nature of the title itself, as well as all stipulations concerning it in the treaties between the United States and the Choctaw Nation, that to avail himself of the 'privileges of a Choctaw citizen' any person claiming to be a descendant of those Choctaws who are provided for in the fourteenth article of the treaty of 1830 must first show the fact that he is such descendant and has in good faith joined his brethren in the Territory with the intent to become one of the citizens of the nation. Having done so, such person has a right to be enrolled as a Choctaw citizen and to claim all the privileges of such, except to a share in the annuities, and that otherwise he can not claim as a right the 'privilege of a Choctaw citizen.' " House Document 274, Fifty-fifth Congress, second session.)

It is further stated by the Commissioner that while this report was pending, the act of June 28, 1898 (30 Stat., 495), commonly called the "Curtis Act," was passed, giving said commission authority "to determine the identity of Choctaw Indians claiming rights in the Choctaw lands under article 14 of the treaty between the United States and the Choctaw Nation, concluded September 27, 1830, * * * and make report to the Secretary of the Interior," and he expresses the opinion that the passage by Congress of said act amounts to a ratification of the conclusion of said commission, "that the Mississippi Choctaws would be entitled to enrollment upon their removal to the

Choctaw Nation, and to participate in the benefits of the Choctaw common property, except annuities, and a direction to identify these persons in order that they may take advantage of their privileges under the law."

The Commissioner, while expressing the opinion that the Mississippi Choctaws who remained in Mississippi under article 14 of the treaty of 1830, and who remove to the Choctaw Nation now, would be entitled to enrollment as citizens of said nation and to a participation in the distribution of the property of the nation, with the exception of the annuities thereof, states:

"Whether or not the persons appearing on the schedule accompanying the report of the commission as to the identification of these Mississippi Choctaws would be entitled to such enrollment as adopted Indians, is a different question in view of the conclusion reached by the Department in its letter of June 15, 1899," above referred to.

The Department concurs in the views of the Commissioner as expressed in his said report, and further advises you that, *prima facie*, the persons appearing on said schedule containing the names of the Mississippi Choctaws entitled to enrollment as adopted Indians, would be entitled to such enrollment, subject, however, to the final action of the Department when the final rolls shall be submitted by the commissioner for the approval of the Secretary.

A copy of the report of the Commissioner, dated June 24, 1899, is inclosed herewith.

Respectfully,

THOS. RYAN, *Acting Secretary.*
ACTING CHAIRMAN OF THE COMMISSION TO THE
FIVE CIVILIZED TRIBES,
Muscogee, Ind. T.

EXHIBIT 4.

Before the Senate Committee on Indian Affairs, in re
Senate bill 1742.

MISSISSIPPI CHOCTAWS

Article 14 of the treaty of September 27, 1830, between the United States and the Choctaw Nation (7 Stats., 333) provides as follows:

“Each Choctaw head of a family being desirous to remain and become a citizen of the States, shall be permitted to do so by signifying his intention to the agent within six months from the ratification of this treaty, and he or she shall thereupon be entitled to a reservation of one section of six hundred and forty acres of land, to be bounded by sectional lines of survey; in like manner shall be entitled to one-half that quantity for each unmarried child which is living with him over 10 years of age; and a quarter section to such child as may be under 10 years of age, to adjoin the location of the parent. If they reside upon said lands intending to become citizens of the States for five years after the ratification of this treaty, in that case a grant in fee simple shall issue; said reservation shall include the present improvement of the head of the family, or portion of it. Persons who claim under this article shall not lose the privilege of a Choctaw citizen, but if they ever remove are not to be entitled to any portion of the Choctaw annuity.”

Particular attention of the committee is invited to the closing sentence of this article, namely:

“Persons who claim under this article shall not lose the privilege of a Choctaw citizen, but if they ever remove are not to be entitled to any portion of the Choctaw annuity.”

This sentence is composed of two parts. The first part absolutely without qualification, preserves in those persons who claim under the article the privilege of Choctaw citizens. The other, having in mind the possibility that at some future time some of these parties, or all of them, might desire to remove to the Indian Territory, provides that if they do so remove they shall not participate in the annuity then payable to citizens of the Choctaw Nation.

The Supreme Court of the United States, in discussing property rights of citizens of the Cherokee Nation in a Delaware case, reported in volume 155 of the United States Reports, said that all the property rights of the citizens of the nation spring exclusively from citizenship. It would be a peculiar situation if it were conceded, as it must be, that the Mississippi Choctaws are citizens of the Choctaw Nation, notwithstanding their residence outside of the

nation, but are not entitled to participate in the benefits of the common property of the nation, in view of the fact that the common property is held by a tenure similar to that by which the common property of the Cherokee Nation is held. The preservation of the rights of these Mississippi Choctaws therefore preserved to them all of their rights of property as Choctaw citizens, except the right to receive any portion of the annuity then being paid to the citizens of that nation.

This being so, the Mississippi Choctaws believe and insist that in the division of the lands of the Choctaw Nation and in the division of the moneys arising from the sales of the lands of the Choctaw Nation, which came to them under and by the treaty of 1830, and previous treaties, they should be allowed to participate, although they may still remain and reside in the State of Mississippi.

The Dawes Commission, and the Interior Department, and the Congress, so far as its legislation is concerned have taken a different view of this question, as will be seen by the following statement of the transactions that have taken place concerning the rights of these Indians.

In the first place, the Committee on Indian Affairs of the House of Representatives during the second session of the Fifty-fourth Congress, reported favorably a measure directing the enrollment of these Mississippi Choctaws, but this act was not adopted by Congress. Instead of that, however, the following provision was contained in the Indian appropriation act of June 7, 1897:

"That the commission appointed to negotiate with the Five Civilized Tribes in the Indian Territory shall examine and report to Congress, whether the Mississippi Choctaws, under their treaties, are not entitled to all the rights of Choctaw citizenship except an interest in the Choctaw annuities."

Pursuant to this legislation, the commission reported on January 28, 1898, which report was transmitted to Congress by the Secretary of the Interior on February 2, 1898. Without discussing the conclusions of fact and law as reached by the commission which led to its final conclusions as to the rights of these people, the commission held in sub-

stance that the Mississippi Choctaws have the right at any time to remove to the Indian Territory and claim participation in all the privileges of a Choctaw citizen save participation in their annuities.

At this point special attention is invited to the concluding paragraph of the report of the commission, which is as follows:

"In conclusion, it seems to the commission that the importance of a correct decision of this question, both to the Mississippi Choctaws and the Choctaw Nation, justifies a provision for a judicial decision in a case provided for that purpose. We therefore suggest that in proper form jurisdiction may be given the Court of Claims to pass judicially upon this question in a suit brought for that purpose by either of the interested parties."

If any action can be said to have been taken by Congress on this report, it is contained in the act of June 28, 1898, commonly called the "Curtis Act," and entitled "An act for the protection of the people of the Indian Territory, and for other purposes," wherein, in section 21, it is provided:

"Said commission shall have the authority to determine the identity of Choctaw Indians claiming rights in the Choctaw lands under article 14 of the treaty between the United States and the Choctaw Nation concluded September 27, 1830, and to that end they may administer oaths, examine witnesses, and perform all other acts necessary thereto, and make report to the Secretary of the Interior."

Pursuant to this provision, the Dawes Commission did identify some 1,900 persons living in Mississippi as Choctaw Indians claiming rights in the Choctaw lands under the said article 14 of the treaty of 1830, and a list of these persons was submitted to the Secretary of the Interior by the commission in a report dated March 10, 1899.

Later on the commission submitted to the Secretary of the Interior the following question:

"Are those persons whose names appear upon the schedule which accompanies the commission's report (meaning the schedule of Mississippi Choctaws) entitled to enrollment as Choctaw Indians and to participate in the distribution of

tribal lands in the Indian Territory upon their removal to the Choctaw Nation?"

The Secretary of the Interior, in a letter dated August 10, 1899, and addressed to the acting chairman of the commission, concurred in the opinion expressed by the Commissioner of Indian Affairs in a report made on the question, that the Mississippi Choctaws who remained in Mississippi under article 14 of the treaty of 1830, and who "remove to the Choctaw Nation now, would be entitled to enrollment as citizens of said nation and to a participation in the distribution of the property of the nation, with the exception of the annuities thereof," and advised the commission further that *prima facie* the persons appearing on the schedule submitted by said commission as "containing the names of the Mississippi Choctaws entitled to enrollment as adopted Indians would be entitled to such enrollment, subject, however, to the final action of the Department when the final rolls shall be submitted by the commission for the approval of the Secretary."

It will be seen from the foregoing that the Dawes Commission and the Interior Department positively hold that the Mississippi Choctaws would be entitled to participate in the common property of the nation on removal to the nation, with the exception of the annuities, and that the Congress apparently holds to the same conclusion, although there is nothing in article 14 which requires these Choctaws to remove to the nation in order to maintain their privilege of citizenship.

A great many of these Mississippi Choctaws do not desire to go to the Indian Territory, but they feel that they are entitled to have their share of the lands which belong to their tribe, and that the law gives them that right. They therefore ask Congress to allow them to submit to the courts the question of law whether they are compelled to move to the Indian Territory in order to enjoy the rights of property which their citizenship in that nation entitle them to enjoy.

And in this connection the attention of the committee is again invited to the concluding paragraph of the report of the Dawes Commission of January 28, 1898, wherein the commission expressly states that the matter ought to

be judicially determined and recommend that it be referred to the Court of Claims for that purpose.

With this statement of the position of the Indians interested in this bill, the question is submitted to the committee, confidently believing that the committee will give the matter careful and proper attention and will provide for these Indians in its wisdom according to the justness of their claim.

LOGAN, DEMOND AND HARLEY,
Attorneys for the Indians.

C. F. WINTON,
Of Counsel for Mississippi Choctaws.

HOUSE OF REPRESENTATIVES

56TH CONGRESS
1st Session

REPORT
No. 475

AUTHORIZING CERTAIN SUITS IN THE COURT OF CLAIMS

MARCH 1, 1900.—Referred to the House Calendar and ordered to be printed.

MR. LITTLE, from the Committee on Indian Affairs, submitted the following

REPORT

[To accompany H. R. 8566.]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 8566) authorizing certain suits in the Court of Claims, and for other purposes, beg leave to submit the following report, and recommend that said bill do pass, with amendments as follows:

After the word "laws," in line 4, page 1, insert the following language:

And white persons who have intermarried with Choctaw

citizens, according to Choctaw laws, and white persons who have intermarried with Chickasaw citizens, according to Chickasaw laws.

Strike out all language after the word "notion," in line 14, page 1, down to and including the word "thereto," in line 2, page 2.

And when so amended your committee recommend the passage of the bill.

The suits authorized by the first and second sections of the bill are intended to hasten the settlement of the contentions between the intermarried whites and the tribes of Indians mentioned in the bill.

The intermarried whites claim that by their marriage to members of the tribes under the laws and treaties of said tribes they are entitled to share in the funds and lands belonging to the tribes, and this is denied by the respective tribes. Your committee believe that the early settlement of this controversy is not only important to the Indian tribes, but is necessary before the final allotment of the lands in said tribes can be made. The suits involve no charge against the Government.

Sections 3 and 4 of the bill refer to the claim of the Mississippi Choctaws, and with reference to the rights of the Mississippi Choctaws the committee report that by the fourteenth article of the treaty of 1830 it was provided that Choctaws desirous of doing so might become citizens of the United States by expressing their intention to remain in that country, and at the same time it was expressly provided that they should "not lose the privilege of a Choctaw citizen," except, as an offset to reservations in Mississippi, they were not to have any interest in the Choctaw annuity even if they should remove to the Western Choctaw Nation.

This subject was considered by the Indian Committee of the House of Representatives in the Fifty-fourth Con-

gress, second session, and report made. (H. R. 3080, hereto attached and made part hereof.)

In the appropriation act of June 7, 1897, Congress made the following provision, to wit:

That the commission appointed to negotiate with the Five Civilized Tribes in the Indian Territory shall examine and report to Congress whether the Mississippi Choctaws under their treaties are not entitled to all the rights of Choctaw citizenship, except an interest in the Choctaw annuities.

Under this authority the Commission to the Five Civilized Tribes made their report (House Doc. 274, Fifty-fifth Congress, second session), copy hereto attached. They reported substantially that a Mississippi Choctaw has the right at any time to remove to the Indian Territory and claim participation in all the privileges of a Choctaw citizen, save participation in their annuities, but that he should be required by some tribunal to prove the fact that he is a descendant of some one of those Indians who conformed to the requirements of the fourteenth article of the treaty of 1830. Upon this report, by an act approved June 30, 1898, known as "An Act for the protection of the people of the Indian Territory, and for other purposes," in section 21, Congress provided as follows:

Said commission shall have authority to determine the identity of Choctaw Indians claiming rights in the Choctaw lands under article fourteen of the treaty between the United States and the Choctaw Nation concluded September twenty-seventh, eighteen hundred and thirty, and to that end they may administer oaths, examine witnesses, and perform all other acts necessary thereto and make report to the Secretary of the Interior. * * *

No person shall be enrolled who has not heretofore removed to and in good faith settled in the nation in which he claims citizenship: *Provided, however,* That nothing con-

tained in this act shall be so construed as to militate against any right or privilege which the Mississippi Choctaws may have under the laws of or the treaties with the United States.

In accordance with this instruction the Commission to the Five Civilized Tribes made a roll of identification of these Indians, and reported the same to the Secretary of the Interior on June 6, 1899, through the Commissioner of Indian Affairs by his letter of that date. The Mississippi Choctaws insist that they should not be required to remove to the Choctaw Nation in order to participate in their pro rata share of this property. It is important to the United States, to the Choctaws and Chickasaws, and to the Mississippi Choctaws to bring this controversy to a speedy conclusion. For that reason your committee recommend that suit be authorized in the manner provided in this bill.

HOUSE OF REPRESENTATIVES

56TH CONGRESS
2d Session

REPORT
No. 2522

TREATY RIGHTS OF MISSISSIPPI CHOCTAWS

JANUARY 29, 1901.—Referred to the House Calendar and ordered to be printed.

Mr. LITTLE, from the Committee on Indian Affairs, submitted the following

REPORT

[To accompany H. R. 4158.]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 4158) to refer the treaty rights of Missis-

issippi Choctaws for adjudication, beg leave to submit the following report, and recommend that said bill do pass without amendment.

The object of this bill is to enable the Mississippi Choctaws to assert in the Court of Claims their alleged right as citizens of the Choctaw Nation to be recognized in the partition of lands in the Indian Territory. The fourteenth article of the Dancing Rabbit treaty reads as follows:

Each Choctaw head of a family being desirous to remain and become a citizen of the States shall be permitted to do so by signifying this intention to the agent within six months from the ratification of this treaty, and he or she shall thereupon be entitled to a reservation of one section of six hundred and forty acres of land to be bounded by sectional lines of survey; in like manner shall be entitled to one-half that quantity for each unmarried child which is living with him over ten years of age, and a quarter section to such child as may be under ten years of age, to adjoin the location of the parent. If they reside upon these lands, intending to become citizens of the States, for five years after the ratification of this treaty, in that case a grant in fee simple shall issue; said reservation shall include the present improvement of the head of the family or a portion of it. Persons who claim under this article shall not lose the privilege of a Choctaw citizen, but if they ever remove are not entitled to any portion of the Choctaw annuity.

The Mississippi Choctaws contend that citizenship in the Choctaw Nation exists by virtue of blood, and not because of locality of residence, and that they are just as much citizens of the Choctaw Nation as any Choctaws anywhere can be, and that as such they are entitled to every right accruing to any citizen of the Choctaw Nation under the Dancing Rabbit treaty, except, of course, those rights from which they were expressly excluded by the terms of the treaty—namely, the annual annuity and the gross sum to

be paid to those who consented to go and did go to the Indian reservation. The bill does not undertake to pass upon the rights of the Mississippi Choctaws, but merely to provide them with a forum in which their claims can be adjudicated.

57TH CONGRESS
1st Session

SENATE

DOCUMENT
No. 319

RIGHTS OF MISSISSIPPI CHOCTAWS IN THE CHOCTAW NATION

MEMORIAL OF THE FULL-BLOOD MISSISSIPPI CHOCTAWS REL-
ATIVE TO THEIR RIGHTS IN THE CHOCTAW NATION

APRIL 24, 1902.—Referred to the Committee on Indian
Affairs (to accompany amendment to S. 4848)
and ordered to be printed

*To the honorable members of the Senate and House of
Representatives in Congress assembled:*

Your memorialists, full-blood Mississippi Choctaws, speaking the Choctaw language, respectfully submit that on December 24, 1889, the general council of the Choctaw Nation passed the following resolution:

Whereas there are large numbers of Choctaws yet in the States of Mississippi and Louisiana who are entitled to all of the rights and privileges of citizenship in the Choctaw Nation; and

Whereas they are denied all rights of citizenship in said States; and

Whereas they are too poor to immigrate themselves into the Choctaw Nation. Therefore,

Be it resolved by the general council of the Choctaw Nation assembled, That the United States Government is

hereby requested to make provisions for the emigration of said Choctaws from said States to the Choctaw Nation. (Eighth report Dawes Commission, 115.)

By the treaty of 1866 the protection of our rights was guaranteed in article 13, as follows:

ARTICLE 13. The notice required in the above article shall be given, not only in the Choctaw and Chickasaw Nations, but by publication in newspapers printed in the States of Mississippi and Tennessee, Louisiana, Texas, Arkansas and Alabama, to the end that such Choctaws and Chickasaws as yet remain outside of the Choctaw and Chickasaw Nations may be informed and have opportunity to exercise the rights hereby given to resident Choctaws and Chickasaws: *Provided*, That before any such absent Choctaw or Chickasaw shall be permitted to select for him or herself, or others, as hereinafter provided, he or she shall satisfy the register of the land office of his or her intention, or the intention of the party for whom the selection is to be made, to become bona fide resident in the said nation within five years from the time of selection; and should the said absentee fail to remove into said nation and occupy and commence an improvement on the land selected within the time aforesaid, the selection shall be canceled, and the land shall thereafter be discharged from all claim on account thereof. (Ibid, 117.)

Judge W. H. H. Clayton, United States judge for the central district of Indian Territory, in his opinion on the Jack Amos case, made the following decision:

I am disposed to the opinion, however, and will so hold that the descendants of the Mississippi Choctaws, by virtue of the fourteenth article of the treaty of 1830, are entitled to all of the rights of Choctaw citizenship, with all of the privileges and property rights incident thereto, provided they have renounced their allegiance to the sovereignty of Mississippi by moving into the Choctaw Nation in good faith, etc. (Ibid, 116.)

Judge Clayton held in the E. J. Horne case as follows:

That all Mississippi Choctaws and their descendants were entitled upon their removal to the Choctaw Nation to all the privileges of a Choctaw citizen, except to the right to participate in their annuities. This right of citizenship being conferred by the treaty, no law afterwards enacted by the Choctaw council can deprive them of that right because it would be in conflict with the treaty which confers that right to them and their descendants, without reference to the quantity of Indian blood. If they are descendants of Choctaw ancestors, it is sufficient. (Ibid, 118.)

This decision by Judge Clayton was confirmed by the Supreme Court of the United States, October term, 1898, May 15, 1899. (Ibid, 197.)

Congress on June 7, 1897, directed the Dawes Commission to examine and report to Congress whether the Mississippi Choctaws under their treaty are not entitled to all the rights of Choctaw citizenship, except an interest in the Choctaw annuities. The Dawes Commission found that they were so entitled, provided they would remove to the Choctaw-Chickasaw Nation. (Ibid, 79.)

In a report of January 28, 1898 (H. R. Doc. 274, Fifty-fifth Congress, second session, p. 6), Congress directed the Dawes Commission to identify such Mississippi Choctaws, by act of June 28, 1898. (Eighth Annual Report Dawes Commission, p. 18.) They did identify the full-blood Choctaws by a schedule submitted to the Department of the Interior May 10, 1899, containing about 1,900 names, and since that time have identified some other full-blood Choctaws in that country.

The Dawes Commission, by statute, were forbidden to receive the application of any non-resident Indians after a certain date, but an exception was made in favor of the Mississippi Choctaws. For this reason many thousand

persons have set up claims pretending they were Mississippi Choctaws, and have put in jeopardy the rights of the real Mississippi Choctaws by virtue of manifest frauds perpetrated in the name of the Mississippi Choctaws by said pretenders.

On February 7, 1901, the United States Commission to the Five Civilized Tribes; the governor of the Choctaw Nation, Hon. Gilbert T. Dukes, and the Choctaw commissioners; and the governor of the Chickasaw Nation, Hon. Douglas H. Johnson, and Chickasaw commissioners, made and entered into an agreement containing the following provision:

MISSISSIPPI CHOCTAWS

13. All persons heretofore identified by the Commission to the Five Civilized Tribes as Mississippi Choctaws, and whose names appear upon the schedule dated March 10, 1899, prepared by said Commission under the provisions of the act of Congress approved June 28, 1898 (30 Stat. L., 495), and such full-blood Choctaw Indians residing in the State of Mississippi and such full-blood Choctaw Indians as may have removed from the State of Mississippi to Indian Territory as may be identified by said Commission shall alone constitute the "Mississippi Choctaws" entitled to benefits under this agreement.

And thereupon provided that those who moved in good faith to the Choctaw-Chickasaw country should be enrolled as Mississippi Choctaws and allotted lands like other Choctaws. (H. R. Doc. 490, Fifty-sixth Congress, second session, p. 12.)

The proposed Choctaw-Chickasaw supplemental agreement (H. R. 13172) has been so ingeniously drawn as to make it impossible for the full-blood Mississippi Choctaws to secure their rights under it. By section 41 they are required, within six months after the date of the final rati-

fication of the agreement, to make bona fide settlement within the Choctaw-Chickasaw country; but the Mississippi Choctaws, in spite of the schedule submitted and the report of the United States Commission identifying them, are prevented from knowing whether they are entitled to remove, because the Interior Department has for three years withheld its approval, and under the law such schedule is not held as identification until approved by the Interior Department, according to the construction of that office. No Mississippi Choctaw knows to this day whether he is identified. If he sells his home and his property to move to the Choctaw Nation, he does so at the jeopardy of losing everything and not being received when he reaches the Choctaw Nation.

The purpose of Congress was to enable the Mississippi Choctaws to know before moving that they would be received. We therefore pray that sections 41, 42, 43 and 44, imposing onerous conditions on the Mississippi Choctaws, be struck out, and a simple, plain provision made, free from ambiguity, as follows, to wit:

MISSISSIPPI CHOCTAWS

41. All persons heretofore identified by the Commission of the Five Civilized Tribes as Mississippi Choctaws, and whose names appear upon the schedule dated March 10, 1899, prepared by said Commission under the provisions of the act of Congress approved June 28, 1898 (30 Stat. L., 495), and such full-blooded Mississippi Choctaw Indians as may be identified by said Commission, and the wives, children, and grandchildren of all such full-blood Choctaws, shall alone constitute the "Mississippi Choctaws" entitled to benefits under this agreement.

42. All "Mississippi Choctaws," as herein defined, who shall remove or may have removed to the lands of the Choctaw and Chickasaw tribes within twelve months after official notification of their identification, shall be enrolled by said commission upon a separate roll designated "Mis-

Mississippi Choctaws;" and lands equal in value to lands allotted to citizens of the Choctaw and Chickasaw tribes shall in like manner be selected and set apart for each of them. All such persons who reside upon the lands of the Choctaw and Chickasaw tribes for a period of one year after enrollment as above provided shall, upon proof of such bona fide residence, receive patents as provided in the Atoka agreement, and they shall hold the lands thus allotted to them as provided in the Atoka agreement for citizens of the Choctaw and Chickasaw tribes, and be treated in all respects as other Choctaws.

The provisions asked for by the full-blood Mississippi Choctaws vary in no substantial way from the reasonable requirements of the treaty itself, but eliminates technical rules and difficult requirements proposed to be imposed upon the Mississippi Choctaws without just reason. We believe the Choctaw-Chickasaw people are perfectly willing to receive all full-blood Choctaws, as they have so expressed themselves.

The unjust provisions and technical rules contained in sections 41, 42, 43 and 44 of the pending agreement were no doubt prepared by the attorney representing the Choctaw and Chickasaw Nations with a view to barring out the pretenders who have attempted to secure enrollment in said nations by fraud. We do not blame but on the other hand commend all efforts of such attorneys to accomplish such a purpose; but we call attention to the fact that while attempting to accomplish this purpose the wording of the provisions is such that they unfortunately do a great injustice to a large number of full-blood Mississippi Choctaws who have already been identified as stated above and who are entitled to enrollment.

We cannot believe that it was the purpose of those who drew the provisions referred to to have that effect. Therefore we offer in lieu of the sections objected to the pro-

posed amendments set out above, which we think fully protect the Choctaw-Chickasaw Nations from all pretenders who are attempting to be enrolled by fraud, and which at the same time preserves the rights of the Mississippi Choctaws. To this there can be no reasonable objection. Simple justice demands it.

Your memorialist respectfully calls attention to the manifest injustice of requiring the Mississippi Choctaws to prove a technical right under article 14 of the treaty of 1830, or any other article. The Mississippi Choctaws were joint purchasers in 1820 of the lands in Indian Territory, and no article of 1830 should be invoked against their right of common ownership in these western lands.

No such principle was ever thought of until by an accident Congress in the act of 1898, requiring the identification, happened to make reference to the fourteenth article, because in that article was a provision that residence in Mississippi should not deprive Choctaws of their rights. The treaty of 1866 expressly provided that opportunity should be given to non-resident Choctaws to remove to the Choctaw Nation when allotments should take place. This recognized right of the treaty of 1866 has not been abated by any act of the Mississippi Choctaws, and their right cannot be justly ignored by the United States or by the Choctaw-Chickasaw Nations without their consent. The Dawes Commission, in its report of June 30, 1901 (Eighth Annual Report, p. 21), points out how injuriously and unjustly this would operate to the Mississippi Choctaws, and shows that Congress is in duty bound to provide for our full-blood people.

Respectfully submitted,

THE MISSISSIPPI CHOCTAWS,
By C. F. WINTON.
ROBT. L. OWEN, *Counsel.*

MEMORIAL OF MISSISSIPPI CHOCTAW INDIANS

MARCH 15, 1904.—Ordered to be printed.

Mr. STEPHENS presented the following

MEMORIAL OF MISSISSIPPI CHOCTAWS, PRAY-
ING FOR AN EXTENSION OF TIME WITHIN
WHICH THEIR RIGHT TO REMOVE TO THE
CHOCTAW COUNTRY MAY BE PERMITTED,
AND FOR THE PASSAGE OF H. R. 13560.

The Honorable the Senate and House of Representatives:

Your memorialists, full-blood Mississippi Choctaws, residents of Mississippi and of Indian Territory, most humbly pray that those who shall have been identified by the United States Commission to the Five Civilized Tribes may be permitted, at any time prior to the completion of allotments, to file their applications to said Commission for allotments, and that they be not required to conform to any other rules relative to their enrollment or allotment than other citizens of the Choctaw Nation by blood.

Your memorialists respectfully submit that by the act of Congress, approved July 1, 1902, entitled "An act to ratify and confirm an agreement with the Choctaw and Chickasaw tribes of Indians, and for other purposes," it was provided by article 41 that Mississippi Choctaws should, within six months after the date of their identification as Mississippi Choctaws by the said Commission, make bona fide settlement within the Choctaw-Chickasaw country, and furnish proof of such settlement within one year after the date of

their said identification as Mississippi Choctaws, under penalty of being barred from their rights as Choctaws.

Many of your petitioners do not understand the English language.

At the request of the Choctaw Nation, through its delegate, Congress has heretofore provided that no contracts made by Mississippi Choctaws relative to the lands to be allotted them in the Choctaw-Chickasaw Nation should be valid. This cuts off from the Mississippi Choctaws the opportunity of employing attorneys willing to incur the expense of attending to the various requirements imposed by the statutes.

These requirements were inserted in the act of Congress upon the insistence of the delegates and attorneys of the Choctaw-Chickasaw Nation with a view to depriving your petitioners of their rights, knowing that your petitioners were very much misinformed, and entirely without means, and that many of them did not understand the English language.

Your memorialists are further required, after having resided upon the lands of the Choctaw-Chickasaw Nation for a period of three years, and before the expiration of four years, to furnish proof of the fact of the three years' residence as a further condition of enjoying the right to Choctaw citizenship. Your memorialists humbly pray for an amendment of the present laws as follows, to wit:

Mississippi Choctaws, identified by the United States Commission to the Five Civilized Tribes as full-blood Choctaws, shall have the right, at any time prior to the closing of the allotment office of the Choctaw-Chickasaw country, to make application and have allotted to them, and to their children born of them, prior to the closing of the Choctaw rolls, lands the same as other Choctaws by blood, without being required to comply with any other conditions than

imposed upon other Choctaws, and any condition making a distinction against the said Mississippi Choctaws are hereby repealed.

Your memorialists respectfully submit that ingenious conditions have been inserted in the law, at the request of the attorneys of the Choctaw-Chickasaw Nation, by virtue of which many Mississippi Choctaws would be barred. Said attorneys have a contract with the Choctaw Nation by which said attorneys receive a fee from the Choctaw Nation for each applicant for citizenship defeated by said attorneys, as your memorialists are informed and believe. For example, your memorialists were required within six months after the date of identification to make bona fide settlement within the Choctaw-Chickasaw country, when it was well known that your memorialists were exceedingly poor; when it was well known that your memorialists, under the Mississippi statutes, could not leave their landlords during the crop season; when under that statute it was a misdemeanor for anyone to invite a Mississippi Choctaw to leave his landlord when under contract with or in debt to his landlord; that such removal could only be accomplished by a compromise with the landlord and the payment of the indebtedness of the Mississippi Choctaw before he could be allowed to remove; when by the skillful contrivance of the attorneys of the Choctaw Nation the Mississippi Choctaws were cut off from financial support by being refused the right to contract with regard to the right of their prospective inheritance in the Choctaw country; that under these artful conditions, many of your memorialists were prevented within six months from making bona fide settlement in the Choctaw country; that these attorneys, having a pecuniary interest as aforesaid, have invoked the courts against your memorialists, as will appear by Exhibit A.

The attorneys for the Choctaw Nation have further in-

geniously contrived and invented various other pitfalls for the Mississippi Choctaws, who by incompetency or ignorance or poverty may neglect to make due proof of three years' bona fide residence and prior to the termination of a fixed four-year term.

Your memorialists respectfully insist that these conditions are imposed for the artful purpose of making fees for the attorneys of the Choctaw Nation, to the great harm of your memorialists, and without serving any good cause either to the Choctaw Nation or to the United States.

Your memorialists have heretofore set up their rights in the premises to the Congress of the United States by various petitions, as will appear from the following:

Memorials of December, 1896, and January, 1897, and September, 1897.

House Report No. 3080, Fifty-fourth Congress, second session.

House Bill No. 10372.

Senate Document No. 129, Fifty-fourth Congress, second session.

House Document, No. 274, Fifty-fifth Congress, second session.

Public 162, approved June 28, 1898, Curtis Act.

Emma Nabors *v.* Choctaw Nation, Supreme Court United States, October term, 1898, brief of appellants.

House Document No. 426, Fifty-sixth Congress, first session.

Senate Document No. 263, Fifty-sixth Congress, first session.

Indian appropriation act, approved May 31, 1900. By this act (Public 131, p. 18) it was provided as follows:

Provided, That any Mississippi Choctaw, duly identified as such by the United States Commission to the Five Civilized Tribes, shall have the right, at any time prior to the

approval of the final rolls of the Choctaw and Chickasaws by the Secretary of the Interior, to make settlement within the Choctaw Chickasaw country, and on proof of the fact of bona fide settlement may be enrolled by the said United States Commission and by the Secretary of the Interior as Choctaws entitled to allotments: *Provided further*, That all contracts or agreements looking to the sale or incumbrance in any way of the land to be allotted to said Mississippi Choctaws shall be null and void.

These particulars we pray shall be reenacted as above prayed for.

Your memorialists call attention to the fact that this language prevented us from receiving proper and necessary pecuniary assistance, and the provisions of the Curtis Act (public 162, sec. 19, p. 8), prohibits us pledging any money which might ultimately be due us per capita, the law saying: "The same shall not be liable to the payment of any previously contracted obligations."

Your memorialists were thus cut off from pecuniary assistance when it was well known to the Choctaws that we were too poor to remove ourselves as they themselves so memorialized the Congress of the United States, and made that representation through the Choctaw general council, declaring that we were too poor to emigrate ourselves into the Choctaw Nation (p. 3, H. Rept. 3080, 54th Cong., 2d sess.).

Your memorialists call attention to the various endeavors to deny them the right conceded to them by Congress. The rights of your memorialists are further set up in H. R. 2522, Fifty-sixth Congress, second session; House Document 490, Fifty-sixth Congress, second session, and Senate Document No. 319, Fifty-seventh Congress, first session, and by the Choctaw-Chickasaw agreement (Public, 228), approved July 1, 1902, in sections 41, 42, 43, and 44.

Your memorialists humbly submit that putting the Mis-

Mississippi Choctaws, who have been identified, upon the same basis as other Choctaws will serve an important part in disentangling a portion of the complicated conditions brought about in allotting the lands of Indian Territory, and will serve to prevent delay in final allotment.

THE MISSISSIPPI CHOCTAWS,
By CHARLES F. WINTON.
R. L. OWEN, *Counsel.*

To Tams Bixby, Thomas B. Needles, Clifton R. Breckinridge, and W. E. Stanley, as the Commission to the Five Civilized Tribes:

You are hereby notified that the Choctaw and Chickasaw nations or tribes of Indians will, on the 18th day of January, 1904, at 2 o'clock P.M., or at such time as may be fixed by the court, apply to the Hon. Charles W. Raymond, judge of the United States Court for the western district of the Indian Territory, to grant a temporary restraining order against you, as the Commission to the Five Civilized Tribes, as prayed for in the bill in equity, a copy of which is hereto attached and marked "Exhibit A."

CHOCTAW AND CHICKASAW NATIONS OR
TRIBES OF INDIANS.
By MANSFIELD, McMURRAY & CORNISH,
Attorneys.

EXHIBIT A

In the United States Court for the western district of the Indian Territory, sitting at Muskogee. The Choctaw and Chickasaw nations or tribes of Indians, plaintiffs, v. Tams Bixby, Thomas B. Needles, Clifton R. Breckinridge, and W. E. Stanley, as the Commission to the Five Civilized Tribes, defendants.

BILL IN EQUITY

The plaintiffs, the Choctaw and Chickasaw nations or tribes of Indians, for cause of action against the defendants, state:

That under the laws of the United States and the treaties between said nations and the the United States, they are the owners of all the lands embraced within the area known as the Choctaw and Chickasaw nations; that the individual members of said tribes own said lands in fee simple, the character of their holding being fixed by the following provision of Article 1 of the treaty of 1855 between the United States and the Choctaw and Chickasaw nations or tribes of Indians:

"And pursuant to an act of Congress approved May 28, 1830, the United States do hereby secure and guarantee the lands embraced within the said limits to the members of the Choctaw and Chickasaw tribes, their heirs and successors, to be hold in common; so that each and every member of either tribe shall have an equal undivided interest in the whole; *Provided*, No part thereof shall ever be sold without the consent of both tribes; and that said lands shall revert to the United States if said Indians and their heirs become extinct or abandon the same."

That under the provisions of the treaty entered into between the United States and said nation or tribes of Indians, on April 23, 1898, commonly known as the Atoka agreement, and the agreement supplementary thereto, entered into on the 21st day of March, 1902, and approved by act of Congress of July 1, 1902, the Commission to the Five Civilized Tribes is authorized and empowered, in strict conformity with said treaties, to allot said lands in severalty among the members of said tribes, as therein provided.

That among other things said supplementary treaty contains the following provision in regard to Mississippi Choctaws:

"Section 41. All persons duly identified by the Commission to the Five Civilized Tribes under the provisions of section 21 of the act of Congress approved June 28, 1898, (30 Stats., 495) as Mississippi Choctaws entitled to benefits under article 14 of the treaty between the United States and the Choctaw Nation concluded September 27, 1830, may, at any time within six months after the date of their identification as Mississippi Choctaws by the said Commission, make bona fide settlement with the Choctaw-Chick-

asaw country, and upon proof of such settlement to such Commission within one year after the date of their said identification as Mississippi Choctaws shall be enrolled by such Commission as Mississippi Choctaws entitled to allotment as herein provided for citizens of the tribes, subject to the special provisions herein provided as to Mississippi Choctaws, and said enrollment shall be final when approved by the Secretary of the Interior. The application of no person for identification as a Mississippi Choctaw shall be received by said Commission after six months subsequent to the date of the final ratification of this agreement, and in the disposition of such applications all full blood Mississippi Choctaw Indians, and the descendants of any Mississippi Choctaw Indians whether of full or mixed blood who received a patent to land under the said fourteenth article of the said treaty of eighteen hundred and thirty who had not moved to and made bona fide settlement in the Choctaw-Chickasaw country prior to June twenty-eighth, eighteen hundred and ninety-eight, shall be deemed to be Mississippi Choctaws, entitled to benefits under article fourteen of the said treaty of September twenty-seventh, eighteen hundred and thirty, and to identification as such by said Commission, but this direction or provision shall be deemed to be only a rule of evidence and shall not be invoked by or operate to the advantage of any applicant who is not a Mississippi Choctaw of the full blood or who is not the descendant of a Mississippi Choctaw who received a patent to land under said treaty, or who is otherwise barred from the right of citizenship in the Choctaw Nation, all of said Mississippi Choctaws so enrolled by said Commission shall be upon a separate roll.

SEC. 42. When any such Mississippi Choctaw shall have in good faith continuously resided upon the lands of the Choctaw and Chickasaw nations for a period of three years, including his residence thereon before and after such enrollment, he shall upon due proof of such continuous, bona fide residence, made in such manner and before such officer as may be designated by the Secretary of the Interior, receive a patent for his allotment as provided in the Atoka agreement, and he shall hold the lands allotted to

him as provided in this agreement for citizens of the Choctaw and Chickasaw nations.

SEC. 43. Applications for enrollment as Mississippi Choctaws, and applications to have land set apart to them as such, must be made personally before the Commission to the Five Civilized Tribes. Fathers may apply for their minor children, and if the father be dead, the mother may apply; husbands may apply for wives. Applications for orphans, insane persons, and persons of unsound minds may be made by duly appointed guardians or curator, and for aged and infirm persons and prisoners by agents duly authorized thereunto by power of attorney, in the discretion of said Commission.

SEC. 44. If within four years after such enrollment any such Mississippi Choctaw, or his heirs or representatives if he be dead, fails to make proof of such continuous bona fide residence for the period so prescribed, or up to the time of the death of such Mississippi Choctaw, in case of his death after enrollment, he and his heirs and representatives if he be dead, shall be deemed to have acquired no interest in the lands set apart to him, and the same shall be sold at public auction for cash, under rules and regulations prescribed by the Secretary of the Interior, and the proceeds paid into the Treasury of the United States to the credit of the Choctaw and Chickasaw tribes, and distributed per capita with other funds of the tribes. Such lands shall not be sold for less than their appraised value. Upon payment of the full purchase price patent shall issue to the purchaser.

That the defendants, as the Commission to the Five Civilized Tribes, have no power and authority to receive proof of the settlement of any persons, identified as a Mississippi Choctaw, entitled to allotment as provided in said treaty, after the expiration of six months from the identification of said person as a Mississippi Choctaw, entitled to benefits under the provisions of said supplementary agreement, nor has the Commissioner any power after proof of such settlement to enroll such person and allot to him a share of the lands of said tribes, as provided in said agreement.

The plaintiffs further state that on the 14th day of

February, 1903, the defendants, as the Commission to the Five Civilized Tribes, identified, under the provisions of said agreement, all the persons so applying for identification as Mississippi Choctaws, in the case of King Brandy et al., pending before said Commission, viz.: King Brandy, Jee Baptieste, William Cole, Mary Baptieste and her two minor children (Sam and Louisa Baptieste), and Celestine Brandy.

That the six months within which said persons so identified as Mississippi Choctaws could, under the provisions of said treaty, make bona fide settlement within the Choctaw and Chickasaw country, expired on the 14th day of August, 1903, and that up to and including that date none of said persons removed to and made bona fide settlement within the Choctaw-Chickasaw country,

That notwithstanding this failure to comply with the law, and notwithstanding said defendants, as the Commission to the Five Civilized Tribes have no lawful power and authority to do so, the defendants are threatening, and will, unless restrained, permit said persons to remove to and make settlement in the Choctaw-Chickasaw country and take possession of the lands belonging to these plaintiffs, to the exclusion of bona fide members of said tribes, and are threatening and, unless restrained, will permit said parties to make proof of such settlement to said Commission, and will, unless restrained, enroll said persons as Mississippi Choctaws, and make to them an allotment of lands as provided in said supplementary agreement.

That the plaintiffs, the members of the Choctaw and Chickasaw nations, will thus be deprived of their common property of the approximate value of \$40,000, to the great damage of these plaintiffs and in violation of their legal and treaty rights.

Plaintiffs further state that said threatened action by the defendants is unlawful, to the great damage of plaintiffs, and constitutes an injury to them for which they have no adequate legal remedy.

Wherefore, the premises considered, the plaintiffs pray that the defendants be enjoined from taking such threatened action, and that upon final hearing a decree be entered per-

petually enjoining them from taking such action in regard to all of such persons, or in regard to any persons similarly situated.

CHOCTAW AND CHICKASAW NATIONS OR TRIBES OF

INDIANS,

BY MANSFIELD, McMURRAY & CORNISH, *Attorneys.*

I, R. P. Harrison, Clerk of the United States Court of the western district of the Indian Territory, do hereby certify that the attached is a true and correct copy of an order of court made on the 18th day of January, 1904, as the same appears from the original on file in my office.

Witness my hand and the seal of said court at Muskogee in said Territory, this 19th day of January, A. D., 1904.

(Seal)

R. P. HARRISON, *Clerk,*
R. A. BAYNE, *Deputy Clerk.*

In the United States Court, in the Indian Territory, western district, sitting at Muskogee. The Choctaw and Chickasaw Nations or Tribes of Indians, plaintiff, vs. Tams Bixby, Thos. B. Needles, Clifton R. Breckenridge, W. E. Stanley as the Commission to the Five Civilized Tribes, defendants.

Now, on this 18th day of January, 1904, come the above-named plaintiffs and defendants, by their respective attorneys, and the application for an injunction, filed in the above-entitled cause, having been presented to, seen, and considered by the court, and the court having heard the evidence introduced in support thereof, and the argument of the counsel, and being fully advised in the premises doth order that the temporary restraining order prayed for in said bill should issue.

Wherefore, it is by the court ordered and adjudged that Tams Bixby, Thomas B. Needles, Clifton B. Breckenridge, and W. E. Stanley, individually, and as the Commission to the Five Civilized Tribes be, and they are hereby, restrained, until the further order of this court, from enrolling King, Brandy, Jow Baptieste, William Cole, Mary

Baptieste, and her two minor children, Sam and Louisa Baptieste, and Celestine Brandy as Mississippi Choctaws, and from making to them an allotment of land as provided in said supplemental agreement, and that the restraining order be in full force and effect from and after the filing with the clerk of this court a bond in the sum of \$2,000 to be conditioned as by law required, the sureties on said bond to be approved by the clerk of the court.

This January 18, 1904, at Muskogee, Ind. T.

C. W. RAYMOND, *Judge*.

(Form No. 191)

SUMMONS

UNITED STATES OF AMERICA,

Indian Territory, Western District, ss;

The President of the United States of America, to the United States Marshal for the Indian Territory, western district:

You are commanded to summons Tams Bixby, Thos. B. Needles, Clifton B. Breckenridge, and W. E. Stanley, as the Commission to the Five Civilized Tribes, to answer on the first day of the next October term of the United States Court in the Indian Territory, western district, at Muskogee, being the 3d day of October, A. D., 1904, a complaint filed against them in said court by the Choctaw and Chickasaw nations, or tribes of Indians, and warn them that upon their failure to answer the complaint will be taken for confessed; and you will make due return of the summons on the first day of next October term of said court.

Witness the Hon. C. W. Raymond, judge of said court, and the seal thereof, at Muskogee, Ind. T., this 19th day of January, A. D., 1904.

(Seal)

R. P. HARRISON, *Clerk*.

By R. A. BAYNE, *Deputy*.

(Indorsed on back as follows): 278-1110. No. 5208. Summons. The Choctaw and Chickasaw Nations vs. Tams Bixby et al. Summons issued the 19th day of January, 1904; returnable October term, 1904. Mansfield, McMurray & Cornish, attorneys for plaintiff.

FILED

NOV 20 1918

JAMES D. MAHER,
CLERK.

IN THE
Supreme Court of the United States

OCTOBER TERM, 1918

WIRT K. WINTON,
Administrator of the
ESTATE OF CHARLES F. WINTON,
Deceased, and Others,
Appellants,

vs.

JACK AMOS AND OTHERS KNOWN
AS THE MISSISSIPPI CHOCTAWS.

No. **6**
15

APPEAL FROM THE COURT OF CLAIMS

BRIEF FOR APPELLANTS

WILLIAM W. SCOTT,
Attorney for Appellants.

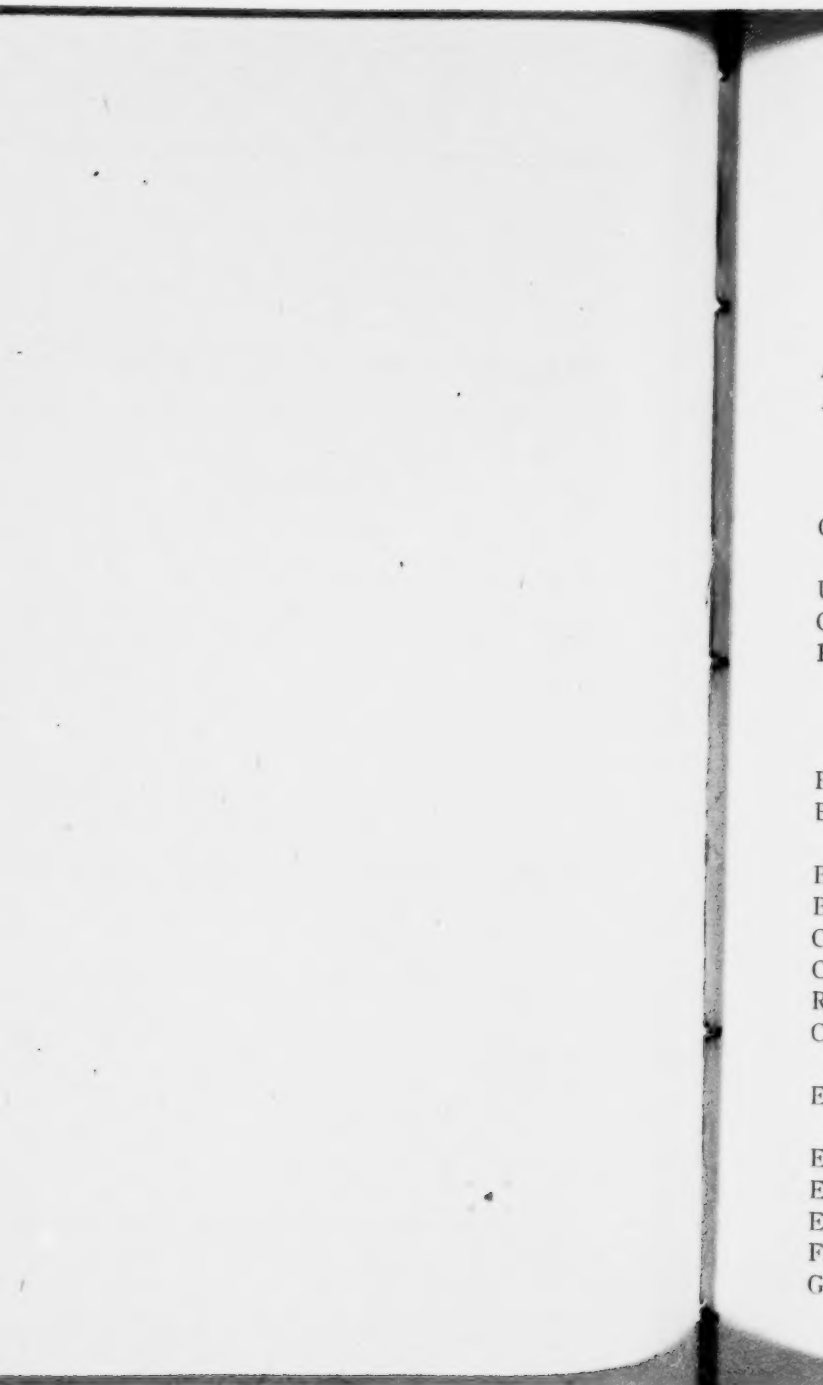


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IN THE
Supreme Court of the United States

OCTOBER TERM, 1918

WIRT K. WINTON, <i>Administrator of the</i> ESTATE OF CHARLES F. WINTON, <i>Deceased, and Others,</i> <i>Appellants,</i> <i>vs.</i> JACK AMOS AND OTHERS KNOWN AS THE MISSISSIPPI CHOCTAWS.	}	No. 123
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BRIEF FOR APPELLANTS

STATEMENT

This is an appeal from the Court of Claims. The points involved are fully stated in the assignment of errors hereinafter set out. A resume of the facts, however, is as follows:

By the Treaty of 1830 the United States confirmed a grant of land to the Choctaw Indians; a vast territory comprising substantially the southern half of Indian Territory.

The Government desired the Choctaws to move out of Mississippi to this western country. Article XIX of this treaty gave special individual grants to leading Indians, nearly all of whom were of mixed blood, in Mississippi; they separating themselves from the Choctaw Nation and its future. R. 98. By Article XIV a number of full-blood Choctaw Indians who were desirous of remaining in Mis-

Mississippi and yet desired to retain their citizenship in the Choctaw Nation west, were provided for. By Article XIV these Indians retained the right to assert their citizenship in the Choctaw Nation west, a right subsequently construed by the United States to mean that they must remove to the west in order to enjoy the right of citizenship. R. 97-98. The Article XIV claimants always insisted that they had the right to remain in Mississippi while enjoying citizenship in the Choctaw Nation west, but were overruled in a decision of the U. S. District Court in Oklahoma in the case of Jack Amos, et al., *vs.* the Choctaw Nation, confirmed by this Court in the *Stevens' case*, 174 U. S. 445 (R. 102). After the *Stevens' case* was decided, those Mississippi Choctaws (Article XIV claimants), were compelled to abandon this contention and yield to the requirement of removal.

Up to 1893 the Western Choctaws recognized the rights of the Article XIV claimants to remove from Mississippi to the Choctaw Nation west, establish residence there, and become citizens of the Choctaw Nation. R. 160, 161.

In 1893 the policy of the United States was declared to divide up and allot the lands of the Choctaw Nation to its citizens including the Chickasaws, who had been merged by the Treaty of 1855 with the Choctaws, and thereafter the Western Choctaws recognizing that the Choctaw Nation as a nation was about to cease, *refused* to recognize the right of the Article XIV claimants or of any Choctaws in Mississippi to remove to the west, and they were confirmed in this attitude by the authorities of the United States. R. 161.

In 1896 some of the Mississippi Choctaws appealing to Hon. J. S. Williams, representing a district in Mississippi where many of these people lived, persuaded him to write to the Commissioner of Indian Affairs asking

whether or not these people, after the lapse of 63 years, had the right to assert citizenship in the Choctaw Nation, or participate in their property rights. He was told they had no such right. Again, in December of 1896, he desired to be informed if Mississippi Choctaws who moved to the Choctaw Nation west and established a residence there, would be recognized, and he was advised by the Commissioner of Indian Affairs that they were subject to summary removal if they attempted to do so before having previously been admitted to citizenship by the Choctaw authorities. R. 101.

It was this denial of the right of the Mississippi Choctaws that made it necessary for them to be represented by competent attorneys, qualified to present their case to the proper officials of the Choctaw Nation, the legislative, judicial and executive officers of the United States.

Robert L. Owen had been United States Indian Agent and had had general supervision of the Choctaws and Chickasaws. He was peculiarly versed in a knowledge of their treaties. He had been practising law for many years in Oklahoma; was Secretary of the first Bar Association, organized upon the establishment of the United States Court at Muskogee in 1890. He knew the rights of these people, and he made an association with Charles F. Winton, a citizen of Kansas, by which in June, 1896, Winton contracted to go to Mississippi and see the Mississippi Choctaws in person, explaining to them their rights, and undertake to write up contracts. Owen contracted to furnish the *forms* (*not funds*) of the contracts, and "to represent the claims of these people before the proper officers of the United States or Indian Government," with the assistance and co-operation of Winton. R. 100, 213-214.

Winton went to Mississippi, found the Mississippi Choctaws very ignorant and very shy, and he had the greatest trouble in having them realize the difficulties confronting them, or to excite their interest in defending their rights. The contracts were never asserted anywhere as having any other value than a power of attorney to represent the interests of the Mississippi Choctaws, and no attempt was ever made to demand the terms of the contracts or to ask more than compensation, *quantum meruit*, for services actually rendered, and expenses. R. 100.

The request for payment for services rendered was presented to Congress in 1906, when the work had been completed, and Congress passed a jurisdictional act, authorizing, in 1906 after ten years of service, the Court of Claims

"to hear, consider and adjudicate the claims against the Mississippi Choctaws of the Estate of Charles F. Winton, deceased, his associates and assigns for services rendered and expenses incurred in the matter of the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation, and render judgment thereon on the basis of quantum meruit, in such amount or amounts as may appear equitable."

"Or justly due therefor,

"Which judgment, if any, shall be paid from funds now or hereafter due such Choctaws by the United States. Notice of such suit shall be served on the Governor of the

Choctaw Nation and the Attorney General shall appear and defend the said suit on behalf of said Choctaws." R. 96.

The request for the above jurisdictional act was made by Winton and his associates, showing that Winton only sought what was just for services rendered.

Congress in June, 1896, authorized the Dawes Commission to make up a roll of the citizens of the Choctaw Nation. R. 99-100.

Winton immediately afterwards went to Mississippi, made a contract with Jack Amos and a number of others, and took their sworn statements of their being full-blood Choctaw Indians, claiming rights under the Article XIV. R. 100.

In September, 1896, Robert L. Owen, an attorney-at-law in good standing, in his professional capacity appeared before the Dawes Commission and presented the claim of Jack Amos and a number of other full-blood Mississippi Choctaws, all claimants under Article XIV, and demanded the right of enrollment under this said Article XIV of the Treaty of 1830, as full-blood Choctaw Indians. Upon an *argument* of the case he submitted evidence showing that the parties were full-blood Choctaw Indians, speaking the Choctaw language, and entitled under Article XIV of the Treaty of 1830 to retain their rights in the Choctaw Nation west. The Dawes Commission rendered formal judgment against them on the theory that they were not residents of the Choctaw Nation. R. 102.

The said Owen in his professional capacity then prepared an appeal to the United States Court for Indian Territory, Judge W. H. H. Clayton presiding. Judge Clayton presented a formal opinion declaring that the Mississippi Choctaws not having previously removed to Oklahoma were not entitled to citizenship, but had forfeited their rights

by such failure to move. Yet the head of the Indian Office had stated that if they had removed they would have been subject to summary arrest and would have been ejected as intruders. R. 102.

An appeal was effected from the judgment of Judge Clayton and presented to this Court by Winton and his associates. This Court did not pass upon the merits of the case, but merely held that the decision of the United States Court in Indian Territory was final under the Statute. *Stevens' Case*, 174 U. S., 445.

In the meantime Winton and his associates presented the matter to the legislative authorities of the United States in Congress by printed memorials, the only way in which it could be done. In December, 1896, they presented a memorial on behalf of the Choctaw full-blood Indians, residing in Mississippi, speaking the Choctaw language, and entitled under the Article XIV to citizenship in the Choctaw Nation west, and offered evidence in support of their contention in the form of a copy of a statute of the Choctaw Nation west, dated December 14, 1890, in which the rights of the Mississippi Choctaws to citizenship in the Choctaw Nation west was formally set up by the legislative authorities of the Choctaw Nation and approved by the Principal Chief. R. 101, 102, 109.

This professional service was immediately followed by a more elaborate brief in behalf of the full-blood Choctaws living in Mississippi in January, 1897 (R. 155-159), and in December following, by a similar memorial at much greater length, submitted to the executive department through the Secretary of the Interior. Winton and his associates confined themselves to representing the interests of the full-blood Mississippi Choctaws and the children of their immediate families. In some cases these children were of mixed blood but of full-blood families. When the con-

troversy was finally settled none but the full-blood Mississippi Choctaws were admitted to citizenship in the Choctaw Nation west. Only those clients represented by Winton and his associates were admitted to the Choctaw Nation west, and from 1906 to 1918 no other full-bloods have been admitted to citizenship by the authorities of the United States, although a resolute effort has been made every year since to secure such admission.

Winton and his associates on authority of the agreements made with 2,000 Mississippi Choctaws, assumed to represent the Mississippi Choctaws as a class entitled under Article XIV, they having no tribal organization by which they could be represented except upon individual authority. R. 112.

In February, 1897, acting in their professional capacity, Winton and his associates prepared a bill and had it presented in Congress (54th) by John Allen, of Mississippi, then Chairman of the Committee on Indian Affairs of the House of Representatives (H. R. 10372), authorizing the enrollment of Mississippi full-blood Choctaws and their children of mixed blood, not less than one-eighth Choctaw blood, that having been the rule laid down by the Choctaw statute of 1886. Upon this bill Robert L. Owen, in his professional capacity, appeared before the Committee of the House of Representatives and made an *argument* in favor of the Mississippi Choctaws, and the Committee made a *favorable* report declaring the full-blood Mississippi Choctaws entitled to citizenship in the Choctaw Nation west. R. 217.

During the same session of Congress the said Owen in his professional capacity *drew up a resolution* calling upon the Indian Office to advise the Senate as to the rights of the Mississippi Choctaws under treaty, and whether they had forfeited these rights by any treaty violations. R.

102, Finding XV. Said Owen *argued* the terms of this proposition before the Assistant Commissioner of Indian Affairs, the Hon. Thomas H. Smith, and furnished the material to enable a proper reply to be made to the Senate Resolution. A report was made giving the facts and setting forth that they had not by any treaty rights forfeited the rights granted by the Treaty of 1830. R. 102, 103.

To the Indian Appropriation Bill in February, 1897, Senator Walthall presented an amendment in language taken from House bill 10372, *prepared* by the said Owen, which resulted in a compromise item on the Appropriation bill in charge of Senator Pettigrew, at that time Chairman of the Committee on Indian Affairs of the Senate, in which the Dawes Commission were instructed to make a formal report to the Congress upon the rights of the Mississippi Choctaws. This Appropriations bill failed to become a law, but on June 7th, the following year, 1898, it was passed by Congress in the same identical form in which it was passed by the previous Congress and was approved by the President, so that this act instructing the Dawes Commission to make this report was directly the result of the professional services of Winton and his associates. R. 103, 218, 219.

A number of the full-blood Mississippi Choctaws lived in the Congressional District of Hon. J. S. Williams. He was originally of the opinion that they had no rights in the Choctaw Nation, and was confirmed in this opinion by the letters of the Commissioner of Indian Affairs of January and December, 1906. R. 101.

Robert L. Owen *presented argument* based upon the treaties in favor of the Choctaws to Mr. Williams and at his request *prepared a written brief* upon it, and convinced him that he was in error, and that the Mississippi

Choctaw Indians had legal rights that should be protected by the Government. R. 217: appendix to motion to remand, page —.

In December, 1897, Robert L. Owen, in his professional capacity, assisted by Preston S. West, afterwards Assistant Attorney General of the Interior Department, *argued* the question of the rights of the Mississippi Choctaws before the Dawes Commission at Muskogee, resulting in a decision in the form of a report from the Dawes Commission, in which the Commission held that the Mississippi Choctaws under Article XIV were entitled to remove to the Choctaw Nation west and be admitted to citizenship, but that it would be necessary for them to be identified by some tribunal charged with that duty. R. 104.

In the spring of 1898 the Indian Committee of the House was presented a measure which ultimately became the so-called "Curtis Act" of June 28, 1898. Mr. Curtis, of Kansas, submitted a bill looking to the breaking up of tribal relations and then a second bill of like purport, and then a third bill, which finally became the Curtis Act. These bills were of intense interest to Indian Territory. As an amendment to the Curtis Act Senator Walthall in pursuance of the report of the Dawes Commission, presented the following amendment,

"Said Commission shall have authority to determine the identity of Choctaw Indians claiming rights to Choctaw lands, under Article 14 of the Treaty between the United States and the Choctaw Nation, concluded February 27, 1830, and to that end to administer oaths, examine witnesses and perform all other acts necessary thereto; and if they find such persons have removed to and in good faith become residents upon the lands in the Choctaw Nation and are entitled to enrollment under said article, they shall place their names on the rolls made by them."

directing the Dawes Commission to identify the Mississippi Choctaws and enroll those who were identified. The Committee on Indian Affairs adopted this amendment, but omitted the vital provision requiring the enrollment and allotment of the Choctaws so identified. The striking out of this vital provision was due to the hostility of the Choctaws and Chickasaws and their able counsel, who opposed the admission of the Mississippi Choctaws.

The Curtis Bill, contemplating the winding up of the affairs of the Five Tribes, and the enrollment of their citizens, expressly provided, "*that no persons shall be enrolled who have not heretofore moved to and in good faith settled in the State to which he claims citizenship.*" This provision was sought by the representatives of the Five Tribes for the purpose of protecting themselves from the claims of non-resident Indians. It would have eliminated the Mississippi Choctaws had it passed unamended. In view of the argument made by Winton, and his associates the Committee inserted the following proviso:

"Provided, however, That nothing contained in this Act shall be so construed as to militate against any rights or privileges which the Mississippi Choctaws may have under the laws of the treaties with the United States." R. 105.

Except for this saving proviso the work done for the Mississippi Choctaws would have failed, and Winton and his associates were profoundly interested in it.

On July 1, 1898, Winton made a report to the Mississippi Choctaws in a printed form, and delivered it by runners to them as follows:

NEWKIRK, O. T., July 1, 1898.

To the Mississippi Choctaws:

For your information I enclose report No. 3080,

H. R., 54th Congress, 2d session. The Indian Committee of House of Representatives decided favorably to the Mississippi Choctaws under date of March 3, 1897. This report was obtained for you by active labor, first hunting up the facts and then getting Senator Walthall to pass a resolution through the Senate to get the information (Sen. Doc. 129, 54th Cong., 2d sess.), and then soliciting Mr. Allen, of Mississippi, to prepare it. By the help of Mr. Williams and Senator Walthall and Mr. Allen the following item was put in the Indian appropriation act of June 7, 1897:

"That the commission appointed to negotiate with the Five Civilized Tribes in the Indian Territory shall examine and report to Congress whether the Mississippi Choctaws, under their treaties, are not entitled to all the rights of Choctaw citizenship, except an interest in the Choctaw annuities."

This commission, January 28, 1898, submitted their report, copy herewith (H. R. Doc. 274, 55th Cong., 2d sess.), deciding that the Mississippi Choctaws "to avail himself of the 'privileges of a Choctaw citizen,' *must prove himself a descendant of a fourteenth-article claimant, and in good faith join the Choctaws west with the intent to become one of the citizens of the nation.*"

In bill H. R. 8581 it was provided, June, 1898, that—

"Said commission shall have authority to determine the identity of Choctaw Indians claiming rights in the Choctaw lands under article fourteen of the treaty between the United States and the Choctaw Nation, concluded September 27, 1830, and to that end they may administer oaths, examine witnesses, and perform all other acts necessary thereto, and report to the Secretary of the Interior."

It provides further that—

"No person shall be enrolled who has not heretofore removed to and in good faith settled in the nation in

which he claims citizenship: *Provided, however*, That nothing contained in this act shall be so construed as to militate against any rights or privileges which the Mississippi Choctaws may have under the laws of or the treaties with the United States."

Not only the Dawes Commission found that the Mississippi Choctaws would have to move to Indian Territory and establish residence in good faith there, but the United States Court, Judge Clayton presiding, July 1, 1897, found that only those Choctaws who had previous to July 1, 1897, settled in good faith in the Choctaw Nation were entitled to citizenship.

By special authority of an item in the Indian appropriation bill allowing an appeal from this decision, I shall on your behalf make an appeal to the Supreme Court of the United States to test the question of your rights.

In making up the roll of Mississippi Choctaws it is of the highest importance to furnish proof that each claimant is a descendant of a fourteenth-article claimant. For this reason I have secured the list of such claimants, and will make it available to my clients as soon as practicable.

The Dawes Commission will probably take evidence this fall and enroll all who are truly entitled.

Yours, very respectfully,

C. F. WINTON,
Newkirk, O. T.

(R. 105.)

In this he reported the progress of his associates, and that they would be compelled to be identified before removing to the west and instructed them how to proceed. R. 105.

The Dawes Commission, represented by Hon. A. S. McKennon, identified the full-blood Mississippi Choctaws applying to him, and on March 10, 1899, he made a formal report of having identified 1,923 persons. R. 107, 108.

The Mississippi Choctaws were notified that the Dawes Commission was not authorized to enroll them for citizenship but merely to identify them. This scheduled identification was never approved by the Secretary of the Interior, but was formally disapproved *eight years afterwards*, on the 1st of March, 1897.

The schedule of identification proceeded on the theory of the so-called full-blood rule of evidence, that is to say, that the Article XIV claimants in the first instance having been Mississippi Choctaw full-bloods, or that their descendants who were full-blood Mississippi Choctaws must be Article XIV claimants, even if they had no record of descent from father to son. The Choctaws kept no record, and had no family names as a rule, and the individuals living in 1899 were unable to prove by competent technical evidence their descent from the individuals enrolled under the Treaty of 1830, as being Article XIV claimants.

In making this schedule of identification Mr. McKennon was furnished with a printed, alphabetical index, prepared by Robert L. Owen, containing 16,000 names of Mississippi Choctaws, which McKennon testified was of great service to him. R. 108.

This valuable rule of evidence was vital to the protection of the Mississippi Choctaws as a class and when this rule of identification had been adopted by the Dawes Commission in its formal report of March 10, 1899, it would have ended the controversy if it had been promptly approved by the Secretary of the Interior. The Choctaw Nation was represented in the controversy relating to the citizenship by the firm of McMurray, Mansfield & Cornish, who were employed on a contingent fee, which resulted in the allowance to them of 9 per cent basis of the value of the estates of those whose names they struck from the rolls, amounting to a very substantial fee.

The year following McKennon's report of March 10, 1899, he left the service of the Government and became associated with McMurray, Mansfield & Cornish, and soon thereafter the Dawes Commission reversed their position with regard to the full-blood rule of evidence, and upon an examination of the schedule made by the Dawes Commission in March, 1899, they found out of 6,000 Mississippi Choctaw applicants only one family, the family of Josephine Hussey, entitled to enrollment. R. 110, 220.

On April 4, 1900, Winton and his associates requested the following amendment to the Indian Appropriation Bill, then pending, "Provided that any Mississippi Choctaw duly identified and enrolled as such by the U. S. Commission to the Five Civilized Tribes shall have the right, at any time prior to the approval of the final rolls of the Mississippi Choctaws by the Secretary of the Interior, to make settlement within the Choctaw-Chickasaw country, and on proof of the fact of *bona fide* settlement, they shall be enrolled by the Secretary of the Interior as Choctaws entitled to allotment." R. 109.

This amendment was offered on the floor of the Senate by James K. Jones, stating that he had done so at the instance of the attorneys of the Mississippi Choctaws, and it was adopted with the understanding that it might go to conference. *Congressional Record*, April ———, 1900, p. ———, Vol. ———. It went to conference and was adopted verbatim, except that the word "shall" was stricken out and the word "may" inserted before the words "be enrolled," and the Indian Appropriation Act of May 31, 1900, contains the following proviso:

"Provided, that any Mississippi Choctaw duly identified as such by the United States Commission to the Five Civilized Tribes, shall have the right, at any time prior to the approval of the final rolls of the Choc-

taw and Chickasaws by the Secretary of the Interior, to make settlement within the Choctaw and Chickasaw country, and on proof of the fact of *bona fide* settlement, may be enrolled by such U. S. Commission and by the Secretary of the Interior as Choctaws entitled to allotment." R. 109.

When Congress adopted the amendment prayed for in the memorials prepared by Winton and his associates, then on the solicitation of the attorneys of the Choctaws and Chickasaws, the Congress adopted a proviso declaring void contracts with the Mississippi Choctaws in the following language:

"Provided further, that all contracts or agreements looking to the sale or encumbrance in any way of the lands to be allotted to said Mississippi Choctaws shall be null and void." R. 109.

Winton's clients thereupon executed new contracts to him, omitting all references to encumbering the land and providing that he should be paid a sum of money equal to a proportionate part of the estate recovered, contracts which were not obnoxious to the statute, and 2,000 Mississippi Choctaws signed such new contracts. R. 112.

The Court below in declaring the opinion (R. 174) that Winton and his associates were in no wise to be accredited with the passage of the Act of May 31, 1900, for which they had prayed in specific terms, was no doubt influenced by the testimony of Mr. Williams that he had drawn the proviso making void contracts and agreements which contemplated the encumbrance or sale of the land, but the Court evidently overlooked the fact that the Court itself had found as a fact that Winton and his associates had prayed for the very provision, recognizing the rights of the Mississippi Choctaws duly identified to make settlement

in the Choctaw-Chickasaw country, and be enrolled by the Dawes Commission which Congress passed. R. 109.

The Dawes Commission having reversed itself on the full-blood rule of evidence, thereupon proceeded to determine what Mississippi Choctaws were *duly identified*, and they interpreted the word "duly" to mean not Mississippi Choctaws identified on the schedule of March 10, 1899, or those entitled under "the full-blood rule of evidence," but only such Mississippi Choctaws as could furnish technically competent evidence that he or she was the direct lineal descendant of some Mississippi Choctaw duly enrolled as an Article XIV claimant under the Treaty of 1830.

This harsh interpretation resulted in a report of the Dawes Commission rejecting all the full-blood Mississippi Choctaws but six or seven. R. 110, 223.

This report was made May 24, 1902, and effectually nullified the obvious intention of Congress; discredited the instruction of the Secretary of the Interior of August 26, 1899, and of August 19, 1900. The Interior Department in the meantime, however, had been induced to alter its attitude toward the Mississippi Choctaws, so that the report of the Dawes Commission of May 24, 1902, would have completely eliminated the Mississippi Choctaws from any possible participation in the Choctaw estate west.

This report of the Dawes Commission was made in pursuance of this changed attitude of the Secretary of the Interior, and in disregard of the opinion of Attorney General Van Devanter of December 3, 1901, he having held therein that the full-blood rule of evidence was binding. R. 221, 222.

On February 7, 1901, an agreement between the Dawes Commission and the representative of the Choctaw-Chickasaws was submitted to the Interior Department, in which

the rights of the full-blood Choctaws were recognized in pursuance of the *prayers and arguments* theretofore submitted by Winton and his associates, as hereinbefore referred to, in the following language:

"All persons hereafter identified by the Commission and the Five Tribes as Mississippi Choctaws, and whose names appear upon the schedule dated March 10, 1899, prepared by the said Commission, under the Acts of Congress approved June 28, 1898, and such full-blood Choctaw Indians residing in the State of Mississippi, and such full-blood Choctaw Indians as have removed from the State of Mississippi to the Indian Territory as may be identified by said Commission, shall alone constitute the Mississippi Choctaws entitled to benefits under its agreement." R. 110.

In the Department of the Interior, without consultation with the Mississippi Choctaws, or their attorneys, this language protecting the Mississippi Choctaws, was struck out and changed so as to read as follows:

"All persons *duly identified* as Mississippi Choctaws by the Commissions of the Five Civilized Tribes under the Act of Congress, may at any time prior to September 1, 1901, make *bona fide* settlement within the Choctaw-Chickasaw country and upon proof of such settlement on or before September 1, 1901, may be enrolled by such Commission as Mississippi Choctaws, entitled to allotment which enrollment shall be final when approved by the Secretary of the Interior." R. 111.

The effect of this amendment was to strike out the recognition of the McKennon roll of March 10, 1899, and to eliminate the full-blood rule of evidence (because the Dawes'

Commission had already so construed the words "DULY IDENTIFIED" in the Act of 1900), and *would have barred from enrollment every Mississippi Choctaw* excepting six or seven, and even these six or seven under penalty of forfeiture would have been compelled within a few months to have moved and made proof of settlement, a thing impossible for people hired out under contract in Mississippi where the laws forbade an agricultural employee from removing during the crop season.

The change by the Dawes Commission and the Choctaw and Chickasaw representatives of the agreement recognizing the Mississippi Choctaws to the formal agreement which had already been interpreted adversely by them in many hundreds of cases, all shows the dangerous character of opposition which the attorneys of the Mississippi Choctaws had to meet at the hands of certain officials of the Interior Department and of the representatives of the Choctaws and Chickasaws.

(Counsel is compelled to point out this almost occult opposition, otherwise they could not hope that it would be clearly understood or the value of the services of Winton and his associates adequately recognized.)

On March 21, 1902, the representatives of the Choctaws and Chickasaws and the Dawes Commission brought in another agreement in which appears the following:

"41. All persons duly identified by the Commission to the Five Civilized Tribes under the provisions of section 21 of the act of Congress approved June 28, 1898 (30 Stats., 495), as Mississippi Choctaws entitled to benefits under Article 14 of the treaty between the United States and the Choctaw Nation, concluded September 27, 1830, may, at any time within six months after the date of the final ratification of this agreement, make *bona fide* settlement within the Choctaw-Chickasaw country, and upon proof of such

settlement to such commission within one year after the date of the final ratification of this agreement may be enrolled by such commission as Mississippi Choctaws entitled to allotment as herein provided for citizens of the tribes, subject to the special provisions, herein provided as to Mississippi Choctaws, and said enrollment shall be final when approved by the Secretary of the Interior. The application of no person for identification as a Mississippi Choctaw shall be received by said commission after the date of the final ratification of this agreement." R. 112.

The objection of Winton and his associates to this proposal was that the term "*duly identified*" had already been construed by the Dawes Commission in a report which they were on the point, at that time, of delivering to the Interior Department, and which they did deliver on May 24th immediately thereafter, in which they interpreted "*duly identified*" to mean the contrary of the full-blood rule of evidence, and which language "*duly identified*" they so interpreted as to exclude every one of the full-blood Mississippi Choctaws excepting Josephine Hussey and her family, consisting of six or seven persons. R. 110.

This language was sinister and dangerous in the highest degree to the Mississippi Choctaws and made necessary the memorial to the Senate and House of Representatives by Winton and his associates of April 24, 1902 (R. 112), which was printed as a Senate Document, and is set out in full in the appendix filed with appellants' motion to remand this case to the Court below for additional findings. Appendix, page ———

In this memorial Winton and his associates prayed that the onerous conditions of Sections 41-44 should be struck out and a provision inserted recognizing the schedule of March 10, 1899, recognizing such full-blood Choctaw Indians as might be identified by said commission, together

with their wives, children and grandchildren, and that they might be allowed to remove subject to reasonable requirements of proof less exacting than the language submitted by the Choctaw-Chickasaw attorneys and the Dawes Commission.

Winton and his associates by said memorial prayed for the recognition of the full-blood Choctaws and their children and grandchildren. The Act of Congress was amended to establish the full-blood rule of evidence and enroll the full-blood Choctaws, but the statute was so rigorously interpreted afterwards by the Dawes Commission that it did not recognize the mixed-blood children of the Mississippi full-blood Choctaws so enrolled showing clearly and completely there was no disposition on the part of the Government officials to recognize the Mississippi Choctaws any further than they were compelled to do by statute.

An appeal had been made to Assistant Attorney General Van Devanter on behalf of the Mississippi Choctaws, and on December 3, 1901, he delivered an opinion on the construction of the Act of May 31, 1900, which had provided that the Mississippi Choctaws duly identified might be enrolled for allotment upon removal west. The Dawes Commission had construed the words "duly identified" to mean that they should be identified upon competent evidence, showing that the claimants were of lineal descent or duly enrolled as a 14th Article claimant under the Treaty of 1830. They required strict technical proof which was impossible for the ignorant Mississippi Choctaws. They had interpreted the Act of May 31, 1900, to mean the elimination of the full-blood rule of evidence laid down by the Dawes Commission in the report of March 10, 1899. Assistant Attorney General Van Devanter held that the action of the Dawes Commission, an authorized tribunal, to pass upon the question, in declaring the full-blood rule of evidence,

and the action of the Interior Department in accepting that report as correct, as an authorized construction which the Dawes Commission could not properly disregard.

Unfortunately for the Mississippi Choctaws, the opinion of Attorney General Van Devanter was ignored by the Dawes Commission and on May 24, 1902, they brought in a report disregarding the full-blood rule of evidence, interpreting the Act of May 31, 1900, so rigorously and technically that they found only one family of Josephine Hussey entitled, out of all the claimants for rights as full-blood Mississippi Choctaws. R. 110.

Upon the urgent appeal of Winton and his associates to the Congress through printed memorials (R. 112), Senate Document 319, 57th Congress, 1st Session, appendix to appellants' motion to remand, page....., urging the establishment of the full-blood rule of evidence, and proper professional *argument* made before the committees of Congress, a compromise was arrived at in the Committee of Indian Affairs of the House of Representatives, in which the Chairman of the Committee advised the attorneys of the Choctaws and Chickasaws, J. F. McMurray, that he must prepare an amendment recognizing the full-blood rule of evidence. This draft was made by Mr. McMurray and submitted to Attorney General Van Devanter, who approved it, and it was accepted by all parties and presented on the floor of the House as a committee amendment, as a means of terminating the long-conducted controversy with regard to the rights of these people, a controversy waged exclusively in their behalf by Winton and his associates. R. 225-226.

There can be no doubt whatever that this compromise was effected by the services, assiduity, diligence and professional services of Winton and his associates. The fact that it was a compromise for the purpose of settling this

controversy is evidenced by numerous statements in the record. R. 225, 226.

The Court below interpreted the opposition of Winton and his associates to the Choctaw-Chickasaw agreements of 1901 and 1902 in the form in which they were submitted, to wit, using the term "duly identified" as being in opposition to the beneficent plans of the Government to give the Mississippi Choctaws their rights. This interpretation is impossible for the reason that Winton and his associates had no object in the world except to enroll the full-blood Mississippi Choctaws for whom they had been contending for six years, and their opposition was not to the Choctaw-Chickasaw agreements, but to the passage of those agreements without "*proper amendment*" as alleged in appellants' second amended petition (R. 26), and in a form which would have excluded the full-blood Mississippi Choctaws.

Winton's memorials, prepared with great professional skill, *and printed as Senate documents*, show in the clearest possible manner what that contention was, that is, that the Choctaw-Chickasaw agreement should be passed in a form unequivocal in terms that would by statute recognize the full-blood rule of evidence which they had secured in the report of March 10, 1899.

Winton and his associates desired that the condition imposed upon the Mississippi Choctaws should not be impossible of fulfillment, that is to say, that the requirement of the agreements submitted in 1901 that the Mississippi Choctaws should remove to the Choctaw country west before the 1st of September, 1901, was an impossible requirement, because the Mississippi Choctaws were farm laborers in Mississippi and therefore subject to the Mississippi statutes that anyone aiding or abetting laborers to move during the crop season would be subject to criminal

proceedings. This was well known to the Choctaw Nation authorities, and the agreement of 1901 while apparently recognizing the rights of the Mississippi Choctaws was so drawn as to exclude them by using the term "*duly identified*" already interpreted against them by the Dawes Commission in many cases which had been submitted with individual reports to the Interior Department.

The conditions imposed by the Choctaw-Chickasaw attorneys in the agreement of 1902, were of like character, that is, that they must be "*duly identified*" which they well knew the Mississippi Choctaws could not comply with under the interpretation of that language already given it by the Dawes Commission and under the other requirements that they should be required to remove within six months after the passage of the agreement *and before they were authoritatively identified*, when the Indian Office had advised Representative Williams that Mississippi Choctaws moving to the Choctaw country west before identification were liable to arrest and ejection as intruders. The Mississippi Choctaws had no money and were compelled to rely upon somebody to furnish them the means of transportation, and nobody could do this before they were identified for enrollment.

The objections made to the agreement of 1902 by Winton and his associates were reasonable and just and strictly within professional propriety and Congress recognized the justness of the contention of Winton and his associates by amending the Choctaw-Chickasaw agreement, submitted to Congress by the Secretary of the Interior, (1) by inserting the full-blood rule of evidence, and (2) by giving the Mississippi Choctaws reasonable time after identification within which to remove, and (3) gave them abundant time in which to be identified.

The claim of citizenship in the Choctaw Nation aroused a great feeling of resentment in the Choctaw-Chickasaw Nation, and in the Interior Department, because the number of applicants rose to gigantic proportions, coming from various States of the Union, offering perjured testimony and there were over 25,000 applications made under the head of Mississippi Choctaws.

But, most urgently and most respectfully we invite the attention of the Court to the fact that Winton and his associates from the beginning in the Jack Amos case and in their memorials from 1896 down to 1906, *made their appeal for the full-blood Mississippi Choctaws alone. Every Memorial shows this.* And only the full-blood Choctaws were finally admitted.

The value of the services of Winton and his associates is further demonstrated convincingly by the fact that subsequent to 1906 the full-blood Choctaws remaining in Mississippi, represented by their counsel and for whose rights the Hon. John Sharp Williams has strenuously struggled for a period of ten years, not one single claimant has been admitted and no legislation from Congress has been possible as referred to in the opinion of the Court below.

Under the agreements of the Choctaw-Chickasaws in 1902, amended at the instance and upon the *argument* and by the prayers of Winton and his associates, *made in the form of a written memorial* to the Senate and the House of Representatives, which was so far dignified by the Congress that it was printed as a U. S. Senate document for the permanent records of the Government, to wit, Senate Document 319, 57th Congress, 1st Session, there were enrolled altogether 1,643 Mississippi Choctaws.

The Record shows that Winton and his associates appealed in vain to the Dawes Commission and to the Interior

Department for agreement on the Act of 1902 that would permit the children of full-bloods who might themselves be of mixed blood to be enrolled, and it was refused both by the Dawes Commission and by the Interior Department by a technical and rigid construction of the compromise agreement of 1902.

The fact that it was a compromise agreement was brought out in the public records by the attorneys of the Choctaws and Chickasaws and by the Choctaw Chief, and their representatives, before the committees of the Senate in urging upon the Senate that the Choctaw rolls should not be opened to the admission of any other Mississippi Choctaws.

In 1906 in order to safeguard the Mississippi Choctaws from further technical constructions of the compromise agreement of 1902, Winton and his associates presented a printed memorial to the Congress of the United States, which was printed as a Senate document,.....CongressSession in which it was prayed that Mississippi Choctaws, duly identified as such should stand upon the same basis as other Choctaw citizens. Congress adopted their prayer in the following terms:

"SEC. 2. That for ninety days after approval hereof applications shall be received for enrollment of children who were minors living March 4, 1906, whose parents have been enrolled as members of the Choctaw, Chickasaw, Cherokee or Creek Tribes or have applications for enrollment pending at the approval hereof, and for the purpose of enrollment under this section illegitimate children shall take the status of the mother, and allotments shall be made to children so enrolled.

"SEC. 21.

* * * * *

"That heirs of deceased Mississippi Choctaws who died before making proof of removal to and settle-

ment in the Choctaw country and within the period prescribed by law for making such proof may, within sixty days from the passage of this act, appear before the Commissioner to the Five Civilized Tribes and make such proof as would be required if made by such deceased Mississippi Choctaws; and the decision of the Commissioner to the Five Civilized Tribes shall be final therein, and no appeal therefrom shall be allowed." (34 Stat., 137, 145.)

This ended the professional services of Winton and his associates to the Mississippi Choctaws. It was a long and arduously fought contest beginning with the presentation of Jack Amos' case before the Dawes Commission in 1896 at Vinita, Okla., appealed that case to the U. S. District Court, and appealed it to this Court, presenting memorials, professionally drawn, giving the legal reasons why the full-blood Mississippi Choctaws were entitled to be enrolled for allotment in the lands west. These *printed memorials to Congress and these professional arguments* made in the only way available for professional men, and by *hearings before committees* were persisted in for a period of ten years at a very great cost to the attorneys representing these interests. And, when the services had been honorably ended, the committees of the two Houses, perfectly familiar with the services rendered, every one of the active members of these committees having testified to these services, Congress passed a jurisdictional act directing the Court of Claims to consider and adjudicate the claim for services of Winton and his associates, and to render judgment *quantum meruit* as might appear equitable or justly due. The services rendered by Winton and his associates were not to an individual as such but to all the Mississippi Choctaws from beginning to the end of the service. R. 96, 97, 229, 230.

Winton and his associates could not represent the in-

terests of the Mississippi Choctaws as a class, except through the authority of individuals who as Mississippi Choctaws were entitled to and who were authorized in their own interests to seek legislative action for the protection of the class to which they belonged, and Winton confessedly was authorized by over 2,000 individuals, a larger number than were actually enrolled. R. 112.

Nowhere does there appear the slightest evidence of unprofessional conduct. No charge is made in the record of unprofessional conduct, and no fact is found of unprofessional conduct. There is nothing in the record or findings of fact to justify a reference to the *Trist* case.

ASSIGNMENT OF ERRORS

Appellants hereby assign the following errors in the judgment of the Court of Claims:

1. Said Court held and decided that the appellants were not entitled to compensation for the services rendered the Mississippi Choctaws as set out in findings 9 to 32 inclusive, R. 100-116, and as set out in findings 43 and 46, R. 130-132.

2. Said Court held and decided that findings of fact on certain special questions of fact previously requested to be found by plaintiff below, were incompetent or immaterial to the issues involved. The rulings here referred to have reference to the subject matter partly covered by requests for findings 9, 10, 11, 12, 16, 18, 19, 20, 23, 24, 29, 31 and 32, as shown on pp. 213 to 231 of the record and as there shown the Court refused to make findings of any kind whatever thereon.

3. Said Court held and decided that the services rendered the Mississippi Choctaws as set out in findings 9 to 32 inclusive, R. 213-231, were such as to bring them within

the ruling of this Court in the case of *Trist vs. Child*, 21 Wall, 450, and therefore the appellants below were not entitled to compensation therefor.

4. The said Court held and decided that the plaintiffs below had not represented before Congress, its committees and the Government departments the Mississippi Choctaws as a class and that having contracts with a part of the class, they were without authority to represent all of the class—the Mississippi Choctaws enrolled and allotted.

5. That said Court held and decided that the United States as trustee for the Mississippi Choctaw Indians could not be made a party defendant.

6. That said Court held and decided to overrule plaintiffs' motion of February 6, 1917, to have embodied in the transcript of the record for this Court the claimants motion filed August 9, 1915, to amend the findings of fact made by the Court on May 17, 1915, which said motion covered the same subject matter of facts set out in claimants' "request for findings of facts on certain questions of fact" filed January 8, 1917, and held that the facts therein requested were immaterial or incompetent as stated in the Court's opinion of January 29, 1917. R. 201, 213, 232.

ARGUMENT

JURISDICTION

The Court below rightly held that it had jurisdiction of the present case under the jurisdictional acts. The jurisdiction of the Court below, however, was challenged by the defendants on several grounds. The first was "that the jurisdiction of the Court of Claims does not extend to private controversy between citizens of the United States." Such contention is entirely foreign to the subject of the

jurisdictional acts. Answer, however, to that contention is found in the case of *the United States vs. The Union Pacific R. R. Co.*, 98 U. S., 569, wherein the Court says:

"The Constitution declares, Article III, Section I, that the judicial power shall extend to all cases in law and equity arising under the Constitution, the laws of the United States, and the treaties made, or which shall be made, under their authority; and to controversies to which the United States shall be a party.

"The matters in regard to which this statute authorizes a suit to be brought are very largely matters arising under the law of the United States which chartered the Union Pacific Railroad Company, and conferred on it certain rights and benefits, and imposed on it certain obligations. It is in reference to these rights and these obligations that the suit is to be brought. It is also to be brought by the United States, which is, therefore, necessarily a party and the party plaintiff. Whether, therefore, the suit which has been brought is one authorized by the statute or not, it is very clear that the general subject on which Congress legislated is within the judicial power of the Government, as defined by the Constitution. * * * The discretion, therefore, of Congress as to the number, the character, the territorial limits of the courts among which it shall distribute this judicial power, is unrestricted except as to the Supreme Court. " * * * *We say, therefore, that, with the exception of the Supreme Court, the authority of Congress, in creating courts and conferring on them all or much or little of the judicial power vested in the United States, is unlimited by the Constitution.*

"Congress has, under this authority, created several classes of courts. It has established by statute the district courts, the circuit courts and the *Court of Claims*, and has conferred on each of these a defined portion of the judicial power found in the Con-

stitution, and has regulated by similar statutes the appellate jurisdiction of the Supreme Court."

A constitutional question raised in the Court below was that if judgment should be rendered in that Court against the defendant Indians it would be "the taking of property without due process of law." The due process of law in the present case is the Jurisdictional Act and as long as the defendant Indians are wards of the Nation, that law is sufficient to comply with all of the provisions of the Constitution.

In the Court below an effort was made by the defendants to discuss the "pertinent provisions of the law of the land in Oklahoma," but no reference whatever was made to the provisions of the Enabling Act under which the State of Oklahoma was admitted into the Union, which reserved to Congress the guardianship over the Indians. That Enabling Act is "the law of the land" so far as the Indian wards of the Nation in Oklahoma are concerned and it limited the people of Oklahoma to the framing of a constitution which would not, in any way, "impair the rights of person or property" of the Indian wards of the Nation, and specially reserved "*the authority of the Government of the United States to make any law or regulation respecting such Indians, their lands, property or their rights by treaties, agreement, law or otherwise which it would have been competent to make if this Act had never been passed.*" Thus it will be seen that the Mississippi Choc-taws occupied an entirely different status than that occupied by a citizen not an Indian over whom Congress exercises no guardianship.

It was strongly contended in the Court below by the defendants that "contracts for securing legislation are invalid." Winton and associates did not sue upon the con-

tracts and the contracts were only introduced as evidence.

A case in which the facts are somewhat similar to the facts in the present case is that of *Butler & Vale vs. the Colville Indians*, 43 C. Cls., 497. The judgment in that case was indirectly affirmed by this Court in *Gordon's case*, 226 U. S., 221. In the Colville Indian case, Maish & Gordon had contracts with the Indians for representing them before Congress and its Committees and they employed Butler & Vale to assist in the work. The work covered by their contract, however, was not accomplished within the life of the contract and it became void by its own terms. Butler & Vale, however, *without authority* took up the work at the next Congress and accomplished it would seem from the findings of the Court of Claims the legislation desired, that is, certain legislation was enacted in behalf of the Colville Indians. In the present case Winton and associates had contracts with the Mississippi Choctaw Indians and Congress passed legislation making these contracts null and void as incumbrances on the Indian lands, but also enacted legislation giving the Court of Claims jurisdiction to determine what services Winton and associates rendered the Mississippi Choctaws, the value thereof and to render judgment accordingly, the same kind of jurisdictional legislation as Congress enacted in the Colville Indian case. Comparing the facts in the Colville Indian case with the facts in the present case we find almost the same state of facts.

In the Colville case, according to findings 4 and 5, p. 505, Levi Maish and Hugh H. Gordon, after the execution of the Maish-Gordon contract with the Indians, "*began to confer with leading members of Congress, and furnished them with facts and decisions of the courts in relation to the matter.*"

In the very beginning of this "*long and somewhat furious*

contest," as styled by the Court below, Owen instituted the Jack Amos case to test the rights of the Mississippi Choctaws under the Act of 1896 and the Treaty of 1830, and immediately thereafter was *the first man to present the matter by argument, oral and written,* to Mr. Williams, a Member of Congress from Mississippi, and to the committees of Congress both of the House and the Senate.

Finding 7 of the Colville Indian case, p. 506, describes the services rendered by Daniel B. Henderson, which, according to that finding, in short, consisted in the preparation of a bill to be introduced in Congress, and a correspondence which he had with the agent of the Colville Indians, and, being instrumental in bringing a delegation of Indians to Washington—with the result that he through them learned a great deal about the history of their claim.

Mr. Owen, at that time, 1896, was most probably the best informed attorney in this country as to Indian legislation, and particularly as to the rights of the Mississippi Choctaws, and the history of those rights under the Treaty of 1830, and Mr. Winton's trips to Mississippi among the Mississippi Choctaws enabled him to learn through them a great deal about the history of the Indians, their way of living, their financial and social status and the history of their claim.

The last paragraph of finding 7, p. 506, states that it appears that the efforts of the attorneys for the Colville Indians were directed up to the year 1905 to secure an act authorizing the Court of Claims, to adjudicate the claims, after which they endeavored to secure a direct appropriation for the Indians.

In the present case the effort of Owen and Winton, the attorneys for the Mississippi Choctaws, from 1896 to 1900, were directed to secure an act authorizing the adjudication

of the rights of the Mississippi Choctaws, by the Court of Claims, or those rights recognized direct by Congress, without requiring the Indians to move to the Indian Territory. Afterwards, or early in the year 1900, the efforts of Owen and Winton, the attorneys for the Mississippi Choctaws, were directed to obtain recognition at the hands of Congress of the rights of the Mississippi Choctaws, requiring removal to the Indian Territory, and in this way obtain authority at the hands of Congress for the Mississippi Choctaws sharing equally with other Choctaws in the property and funds of the Choctaw Nation.

Finding 8, p. 507, of Colville Indian case, refers to the work done by Frederick C. Robinson, and states that he first became interested in the Colville case in 1904 and in the early part of 1906 made a trip to Washington and paid the expenses of Hugh Gordon's coming to Washington, and there for the first time met Butler and Vale and discussed the case with them and with them undertook to map out such line of action as would conduce to establishing the rights of the Indians, and that he prepared a brief on the subject and *saw the members of the Conference Committee* and laid before them his views on the rights of said Indians, and that he supplied Marion Butler from time to time with facts upon the matter.

Finding 13 of the Colville Indian case, page 510, states that Marion Butler first came into the case as a result of his employment by Henderson, Maish and Gordon, about 1903, and at once proceeded to prepare a bill for the relief of said Indians, which was introduced in the Senate in a modified form. Mr. Butler prepared a brief on the question of the Indians' title, which was presented to the committee, but no action was taken at that session of Congress. In 1904 another bill substantially the same was introduced in the Senate, and Mr. Butler appeared before the Com-

mittee and made arguments on the question of title, but failed to get a favorable report.

The record in the present case shows very clearly that Owen, Winton and associates *prepared numerous bills and had various hearings*, and obtained some *favorable reports* in behalf of recognizing of the rights of the Mississippi Choctaws. In this way their efforts were more favorably recognized at the hands of the committees than were the efforts of Butler and attorneys for the Colville Indians, for they failed to secure favorable reports.

Up to 1904 all of the services rendered by Butler and Vale and associates in behalf of the Colville Indians was under the Maish-Gordon contract, *which expired that year*. After the expiration of the Maish-Gordon contract, Mr. Butler, *without any authority whatever*, appeared before the committee and stated that he wished to continue the prosecution of the claim on a *quantum meruit*, and made an argument on the question as to whether the decision in the Lone Wolf case was applicable to the Colville claim, but no action was taken at that session of Congress.

In the 58th Congress, 1905, Mr. Butler caused to be introduced in the Senate a bill for the relief of the Indians, providing for the recognition of their rights, and setting aside to their credit in the United States Treasury, the sum of \$1,500,000. This bill or provision was introduced in the form of a proposed amendment to the Indian Appropriation Bill, and Butler appeared before the sub-committee in support of said amendment and made arguments in support thereof. Said amendment, slightly modified, was placed upon the Appropriation Bill, and passed the Senate, but the House of Representatives failed to concur. Practically the same work with the same result was had at the next session of Congress, *and it was left to the conference*

committee which considered it and reported the amendment, and it became a law.

Winton and Owen, in the beginning, had contracts with many Mississippi Choctaws to represent them before the authorities of the Choctaw Nation, Government officials and Congress and its committees in the matter of their claim to citizenship in the Choctaw Nation. In 1900 Congress, by the act of May 31, 1900, annulled those contracts, but, notwithstanding this fact they, like Butler in the Colville Indian case, continued to labor in behalf of the Mississippi Choctaws, preparing bills and having them introduced in both Houses, *presenting oral and written arguments* to the committees in behalf of the Mississippi Choctaws.

The Winton-Owen Memorial of April 24, 1902, petitioned Congress for an amendment giving the Mississippi Choctaws time to remove after their identification and also to permit application for recognition and enrollment of Mississippi Choctaws, the same as that granted to any other Choctaw.

In the Colville Indian case efforts to obtain legislative relief for the Colville Indians met with adverse reports in the beginning, as did the efforts in the present case, to obtain legislative relief for the Mississippi Choctaws, in the beginning. Nothing was accomplished for the Colville Indians during the life of the Maish-Gordon contract, and after its expiration when Butler or anyone else for or with him, appeared before the committees of Congress in behalf of the Colville Indians, they did so by permission, consent or acquiescence on the part of the committee or the members of said committee representing Congress. When Owen and associates appeared before the Committees of Congress, urging legislative relief for the Mississippi Choctaws, especially after the attempt on the part of Congress in 1900 to annul the contracts with the Indians, they did

so with the permission, acquiescence and consent of the respective committees, and the members thereof representing the Congress, just as did Butler and Vale in the Colville Indian case.

In the same act which granted to the Colville Indians the legislative relief sought for by Butler and Vale, Congress gave the Court of Claims jurisdiction to ascertain and determine, what compensation the Indians should pay them, their attorneys, for said services, with authority to render judgment therefor.

Owen and Winton, even after the passage of the Act of July 1, 1902, continued their labor in behalf of the Mississippi Choctaws, and the Act of Congress containing a recognition of the rights of the Mississippi Choctaws, set out in finding thirty-one, further than that provided for in the Act of July 1, 1902, also contained a provision giving the Court of Claims jurisdiction to hear, consider and adjudicate the claims against the Mississippi Choctaws of the estate of Winton, deceased, his associates and assigns, for services rendered and expenses incurred in the matter of the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation, and to render judgment thereon on the principle of *quantum meruit* in such amount or amounts as may appear equitably or justly due therefor, the same as did Congress in the Colville Indian case. It would, therefore, seem that the two cases are in almost all, if not all, respects, similar. If there is any difference, that difference is in favor of Owen and Winton, in this, that the facts in the Colville Indian case show that subsequent to May, 1904, the services rendered by Butler, Vale and associates were voluntary and without authority, while in the present case Owen and Winton had the authority of a majority of the Mississippi Choctaws to represent them.

In the present case it is shown that the Mississippi Choctaws were informed by Winton's circular letter addressed and sent to them, advising them of the action which was being taken in Congress in their behalf. R. 106.

In the Colville Indian case the findings of fact do not show that the Indians had any knowledge whatever of the services rendered by Butler, Vale and associates, after the expiration of the Maish-Gordon contract in May, 1904.

In the Colville Indian case it is stated on page 525 that Butler, Vale and associates in their efforts to secure legislative relief for the Colville Indians, had "*the valuable assistance of the Department of the Interior.*" In the present case the attorneys for the Mississippi Choctaws did not have the valuable assistance of the Department of the Interior, but on the contrary, *had to overcome the opposition of the Department of the Interior*, the opposition of the Dawes Commission and the opposition of the representatives of the Choctaw Nation. R. 160-161.

In the case of *Bailey vs. the Osage Indians and the United States*, 43 C. Cls., 353, the Court entered a judgment in favor of the plaintiff for compensation for services rendered the Indians in a sum which the Court deemed to be "*fair and reasonable*" as required by the jurisdictional act, plaintiffs' contract with the Indians not having received the official sanction of the Secretary of the Interior as provided by section 2103, Revised Statutes was *ultra vires*, and was only used by the Court as evidence. 43 C. Cls., 353, 357-8.

In the case of *Crocker vs. U. S.*, 49 C. Cls., 85, an action upon an express contract, judgment was rendered by the Court of Claims against the Government as of a *quantum meruit* and that Court said:

"The result, therefore, is that the plaintiff company

did not perform its contract, but committed a breach thereof, which is not cured by its offer to make restitution after the fact. The company never did at any time furnish more than the body of the satchels. This suit, it is true, is predicated upon the written contract. The allegations of the petition are confined strictly to such a cause of action; nevertheless, we believe it is within the province of the Court to award judgment as upon *quantum meruit*. *Clark vs. United States*, 95 U. S. 539; *Warrell vs. United States*, 103 U. S., 651; *Thomas vs. Brownville, etc., R. R. Co.*, 109 U. S., 522. Defendants practically concede this authority, but contest the sufficiency of proof to sustain the value of the goods furnished."

The above case was affirmed by this Court, 240 U. S., 74.

The defendants below contended that "the Mississippi Choctaws were released from the guardianship of the United States by the Treaty of September 27, 1830."

The said treaty of September 27, 1830, does not by inference or otherwise release the Mississippi Choctaws from the guardianship of the Government. The construction of said treaty most favorable to that contention is that the Choctaws remaining in Mississippi might become citizens of the States, but under this most favorable construction such Choctaws would "*not lose the privilege of a Choctaw citizen*" and therefore remained wards of the Nation in accordance with the terms of the 14th article of said treaty.

Citizenship, however, in a State, or national citizenship is not incompatible nor inconsistent with Government control or Government guardianship of the Indian. *United States vs. Logan*, 105 Fed. 240; *United States vs. Mullin*, 71 Fed. 682; *Rainbow vs. Young*, 88 C. C. A. 653, 161 Fed. 836; *United States vs. Rickert*, 188 U. S. 432; *McKay vs. Kalyton*, 204 U. S. 458; *Beck vs. Flourney Live Stock and Real Estate Co.*, 12 C. C. A. 497, 27 U. S. App. 618, 65 Fed. 30;

Farrell vs. United States, 49 C. C. A. 183, 110 Fed. 942; *Re Coombs*, 127 Mass. 278; *State ex rel. Tompton vs. Denoyer*, 6 N. D. 586, 72 N. W. 1014; *State vs. George*, 39 Or. 127, 65 Pac. 604.

This Court considered this question in the case of the *United States vs. Celestine*, 215 U. S. 195, wherein the Court speaking through Mr. Justice Brewer said:

"Notwithstanding the gift of citizenship, both the defendant and the murdered woman remained Indians by race; at any rate, it cannot be said to be clear that Congress intended, by the mere grant of citizenship, to renounce its jurisdiction over the individual members of this dependent race. There is not in this case in terms a subjection of the individual Indian to the laws, both civil and criminal of the State; no grant to him of the benefit of those laws; no denial of the *personal jurisdiction* of the United States."

According to the above words of this Court as spoken by Mr. Justice Brewer, the gift of citizenship to an Indian is not "*a subjection of the individual Indian to the laws, both civil and criminal, of the State;*" and the gift of citizenship is "*no grant to him of the benefit of those laws,*" and it is "*no denial of the personal jurisdiction of the United States,*" therefore, the contention that the Court of Claims was without jurisdiction by reason of that provision of the Constitution which declares that no person shall be deprived of life, liberty or property without due process of law is not tenable.

It is settled beyond question that the Government of the United States is the guardian of the Indians, and that that guardianship can only be released by Congress. The Mississippi Choctaws by race were naturally the wards of the Nation, and at various times Congress has exercised that

guardianship by enacting legislation pertaining to them until finally the act of May 31, 1900, and the Choctaw-Chickasaw agreement of July 1, 1902, became laws, as a result of which legislation they became *legally recognized* citizens of the Choctaw Nation, and certainly from that time to the present they have been under the direct guardianship of the Government, and no law can be found releasing them from that guardianship.

In the case of *Tiger vs. The Western Investment Co.*, 221 U. S., 286, this Court reviews previous decisions relative to the power of Congress over the person and property of individual Indians. Marchie Tiger was one of those Indians who became a citizen of the United States under the act of March 3, 1901, 31 Stat., 1447, and the Court's opinion in the Tiger case clearly holds that the Indian is still the ward of the Nation notwithstanding the fact that he had become a citizen of the United States. In the Tiger case the Court said.

"The power of the general Government over these remnants of a race once powerful, now weak and diminished in numbers, is necessary to their protection, as well as to the safety of those among whom they dwell. It must exist in that government, because it never has existed anywhere else: because the theater of its exercise is within the geographical limits of the United States; because it has never been denied: and because it alone can enforce its laws of all the tribes.' *United States vs. Kagama*, 118 U. S., 375, 30 L. Ed., 228, 6 Sup. Ct. Rep., 1109.

* * * * *

"Citizenship, it is contended, was conferred upon the Creek Indians by the act of March 3, 1901 (31 Stat. at L. 1447), amending the act of February 8, 1887 (24 Stat. at L. 390), by adding to the Indians given citizenship under that act, 'every Indian in the Indian territory.' So amended the act would read as

to such Indian: 'He is hereby declared to be a citizen of the United States, and entitled to all the rights, privileges and immunities of such citizen.' Is there anything incompatible with such citizenship in the continued control of Congress over the lands of the Indians? Does the fact of citizenship necessarily end the duty or power of Congress to act in the Indian's behalf?

"Certain aspects of the question have already been settled by the decisions of this Court. That Congress has full power to legislate concerning the tribal property of the Indians has been frequently affirmed. *Cherokee Nation vs. Hitchcock*, 187 U. S., 294, 308.

"Nor has citizenship prevented the Congress of the United States from continuing to deal with the tribal lands of the Indians.

* * * * *

"Taking these decisions together it may be taken as the settled doctrine of this Court that Congress, in pursuance of the long-established policy of the Government, has a right to determine for itself when the guardianship which has been maintained over the Indian shall cease. It is for that body and not the courts, to determine when the true interests of the Indians require his release from such condition of tutelage.

"The privileges and immunities of Federal citizenship have never been held to prevent governmental authority from placing such restraints upon the conduct or property of citizens as is necessary for the general good. Incompetent persons, though citizens, may not have the full right to control their person and property. The privileges and immunities of citizenship were said, in the *Slaughter House Cases*, 16 Wall., 36, 76, 21 L. Ed., 394, 408, to comprehend:

"'Protection by the Government, with the right to acquire * * * and possess property of every kind and to pursue and obtain happiness and safety, subject, nevertheless, to such restraint, as the Govern-

ment may prescribe for the general good of the whole.'

"Conceding that Marchie Tiger, by the act conferring citizenship, obtained a status which gave him certain civil and political rights, inhering in the privileges and immunities of such citizenship, unnecessary to here discuss, he was still a ward of the nation so far as the alienation of these lands was concerned, and a member of the existing Creek Nation."

In the case of *Heckman vs. United States*, 224 U. S., 413, the Court says:

"It is further urged that there is a defect of parties, on account of the absence of the Indian grantors. It is said that they are the owners of the lands and hence sustain such a relation to the controversy that final decree cannot be made without affecting their interest. *Shields vs. Barrow*, 17 How., 130, 139, 15 L. Ed., 158, 160; *Williams vs. Bankhead*, 19 Wall., 563, 22 L. Ed., 184.

"The argument necessarily proceeds upon the assumption that the representation of these Indians by the United States is of an incomplete or inadequate character; that although the United States, by virtue of the guardianship it has retained, is prosecuting this suit for the purpose of enforcing the restrictions Congress has imposed, and of thus securing possession to the Indians, their presence as parties to the suit is essential to their protection. This position is wholly untenable. There can be no more complete representation than that on the part of the United States in acting on behalf of these dependents, whom Congress, with respect to the restricted lands, has not yet released from tutelage. Its efficacy does not depend upon the Indians' acquiescence. It does not rest upon convention, nor is it circumscribed by rules which govern private relations. It is a representation which traces its source to the plenary control of Congress in legislating for the protection of the Indians under its care,

and it recognizes no limitations that are inconsistent with the discharge of the national duty."

The Mississippi Choctaws, as well as all full-blood Indians living in Indian Territory, now Oklahoma, are not only citizens of the United States, *but are also wards of the Nation*, as was decided by the Court in the *Marchie Tiger* case. The Mississippi Choctaws have not been released from the Nation's guardianship and still being wards of the Nation, Congress, believing that some service had been rendered to these wards, passed the jurisdictional act authorizing suit to be brought in the Court of Claims. When Congress clothed the Court of Claims with jurisdiction to hear, consider and adjudicate the claims against the Mississippi Choctaws, a due process of law was provided, the same due process of law exactly as Congress provided under which the Court of Claims entered a judgment against the Eastern Cherokees fixing the attorneys' fees. 45 C. Cls. 104.

It is true the Eastern Cherokee case is a branch of the case of the *Cherokee Nation vs. The United States*, 40 C. Cls. 252, but the moment that the Court decreed that the Eastern Cherokees were entitled to a certain fund or sum of money, that sum of money became the property of the Eastern Cherokees, and when the Court in a later proceeding entered a judgment in favor of the attorneys for the Eastern Cherokees for a sum equal to fifteen per cent (amounting to \$740,555.41) of the sum or fund decreed to the Eastern Cherokees, it was taking property from the Eastern Cherokees just as property would be taken from the Mississippi Choctaws in the event the Court of Claims should in the present case render judgment against them.

By the act approved April 26, 1906, 34 Stat. at L., 144, Sec. 19, it is provided:

"That no full-blood Indian of the Choctaw, Chickasaw, Cherokee, Creek or Seminole tribes shall have power to alienate, sell, dispose of, or encumber in any manner any of the lands allotted to him for a period of twenty-five years from and after the passage and approval of this act, unless such restriction shall, prior to the expiration of said period, be removed by act of Congress."

The property of the Choctaw Nation is exclusively under the control of Congress and it is for Congress alone to designate the forum in which claims against the Indian allottees for services rendered in connection with their allotments and individual shares in the tribal property are to be determined, *Southern Kansas Railway Co. vs. Briscoe*, 144 U. S., 133-135.

Congress in the proper discharge of its fiduciary obligations to its wards, the 1,643 Mississippi Choctaw Indians, possesses plenary power over all tribal property, both lands and moneys, and over all lands allotted in severalty to individual Indians, the sale, alienation or incumbrance of which, by the allottee is prohibited by law, notwithstanding citizenship, both State and Federal, has been conferred upon them, and the Government now holds their funds in trust for them.

In *Goat vs. United States*, 224 U. S., this Court, at page 316, says:

"Upon the matter involved, our conclusions are that Congress has had at all times, and now has, the right to pass legislation in the interest of the Indians as a dependent people; that *there is nothing in citizenship incompatible with this guardianship* over the Indian's lands inherited from allottees as shown in this case; that in the present case when the Act of 1906 was passed, the Congress had not released its control over

the alienation of lands of full-blood Indians of the Creek Nation; that it was within the power of Congress to continue to restrict alienation by requiring, as to full-blood Indians the consent of the Secretary of the Interior to a proposed alienation of lands such as are involved in this case; *that it rests with Congress to determine when its guardianship shall cease*; and while it still continues, it has the right to vary its restrictions upon alienation of Indian lands in the promotion of *what it deems the best interest of the Indian.*"

On March 3, 1871, 16 Stat. L., 566, section 2079, Revised Statutes, Congress enacted a law providing that "no Indian Nation or tribe within the territory of the United States shall be acknowledge or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty." Prior to this time the Government had recognized the Indian tribes as having some of the attributes of nations and entered into many treaties with them, but as was said by this Court in the case of *Heff*, 197 U. S., 488-509,

"from that time on the Indian tribes and the individual members thereof have been subjected to the direct legislation of Congress." (P. 498.)

The burden of the contention of the defendants below was that because the Government had granted citizenship to the Indians in Oklahoma, they have, therefore, been released from the guardianship of the Nation. The question of the relation of citizenship to the control or guardianship by Congress of the individual Indian was before this Court in the case of the *United States vs. Rickert*, 188 U. S., 432, wherein it was said:

"It is said that the State has conferred upon these

Indians the right of suffrage, and other rights that ordinarily belong only to citizens, and that they ought, therefore, to share the burdens of Government like other people who enjoy such rights. These are considerations to be addressed to Congress. It is for the legislative branch of the Government to say when these Indians shall cease to be dependent and assume the responsibilities attaching to citizenship. This is a political question which the courts may not determine."

In the case of *Ross vs. Eells*, 56 Fed., 855, the United States Circuit Court sustained the claim that certain members of the Puyallup tribe of Indians in the State of Washington, to whom allotments had been made, and who became citizens of the United States and also of the State when it was admitted into the Union, had been emancipated from the guardianship of the Government, but upon appeal to the Circuit Court of Appeals, the decision of the lower Court was reversed, the Appellate Court holding that:

The act of February 8, 1887, which confers citizenship, clearly does not emancipate the Indians from all control or abolish the reservation.

and cited with approval a Massachusetts case and said:

And it was held *in re Coombs*, 127 Mass., 278, that it was competent for the legislature to continue the guardianship by the State after they had been made citizens.

The *Coombs* case was appealed to this Court and was dismissed, 163 U. S., 702.

A recent case decided by this Court involving this same question is that of *Bowling vs. The United States*, 233 U. S., 528, wherein it was held that:

The guardianship of the Federal Government over an Indian does not cease when an allotment is made and the allottee becomes a citizen of the United States.

It may be, although it is not conceded but the contrary contended, that prior to the passage of the act of March 3, 1871, which declared that "no Indian Nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe or power with whom the United States may contract by treaty," R. S. 2079, that the Government was only the guardian of the Indian tribe and not the guardian of the individual Indian, and his Indian property, but since the passage of that act, as was said by this Court in the case of *Heff*, *supra*:

"Of late years a new policy has found expression in the legislation of Congress—a policy which looks to the breaking up of tribal relations, the establishing of the separate Indians in individual homes free from national guardianship and charged with all the rights and obligations of citizens of the United States. Of the power of the Government to carry out this policy there can be no doubt. It is under no constitutional obligation to perpetually continue the relationship of guardian and ward. It may at any time abandon its guardianship and leave the ward to assume, and be subject to all the privileges and burdens of one sui juris, and it is for Congress to determine when and how that relationship of guardianship shall be abandoned. It is not within the power of the courts to overrule the judgment of Congress" (p. 499).

That the Government exercises guardianship over the individual Indian and his Indian property is also shown by the decision of this Court in the case of *Wiggan vs. Conolly*, 163 U. S., 56, wherein the Court sustained an act

of Congress extending the restricted period upon the alienation of lands allotted and patented by holding that:

The land *and the allottee* were still under the charge and care of the nation and the tribe, and they could agree for still further protection, a protection which no individual was at liberty to challenge.

In the case of the *Cherokee Nation vs. Hitchcock*, 187 U. S. 294, decided December 1, 1902, after the passage of the act of March 3, 1901, granting citizenship to the Indians in Indian Territory and the allotment act of July 1, 1902, this Court held that the act of March 3, 1901, granting citizenship to the Indians in the Indian Territory did not release them from the guardianship of the Government.

The guardianship of the Government over the Indians, whether allotted or not, can be to a great extent likened to the guardianship which the States exercise over incompetent citizens, and this similarity seems to have been recognized by this Court in the case of *Winters vs. The United States*, 207 U. S., 564, wherein the Court said:

These acts of 1904 and 1906, and any other acts looking to the protection of the title of the full-blood Indians to the lands allotted to them, are analogous to the protection afforded by the States to the property of infants and others incompetent from any cause to manage their own affairs, though they be citizens, of the United States.

**CONTRACTS WITH A PART OR THE MAJORITY
OF A CLASS AUTHORITY FOR REPRESENTING THE CLASS**

SERVICES RENDERED BENEFITING ALL THE
CLASS SHOULD BE PAID FOR BY ALL INDIVIDUAL INDIANS COMPOSING THE
CLASS WHO RECEIVED THE BENEFIT OF THE SERVICES

The case of *Rollins et al. vs. United States*, 23 C. Cls., 106, was in fact a case against the United States and the Eastern Band of North Carolina Cherokee Indians. It was referred to the Court of Claims by the Secretary of the Interior under the Bowman Act. The Court of Claims found that "the claimants are entitled to the sum of ten thousand one hundred and seventy-six dollars and seventy-seven cents (\$10,176.77) beyond what has been paid to them." The Eastern Band of North Carolina Cherokees were those Cherokee Indians who remained in North Carolina after the nation moved west and according to the decision of the Court of Claims in the case of the *Eastern Cherokees vs. United States and the Cherokee Nation*, 20 C. Cls., 449, "were not regarded by the treaty-making powers as forming a part of the Cherokee Nation" and in the statement of the case it is said that "it appears that the claimants are neither a sovereignty nor a body corporate nor an aggregation of individuals; that all tribal relations between them and the Cherokee Nation have been severed and that they are virtually citizens of the States east of the Mississippi." The latter case was appealed to this Court and the decision of the lower Court affirmed, 117 U. S., 288.

This North Carolina Cherokee case should be considered in connection with the Rollins case decided three years later

by the Court of Claims as hereinbefore mentioned and wherein the Court held that a contract executed by part of a class of Indians was authority for rendering services for all of the class.

In the Rollins case *supra* the contract was not signed and Rollins was not employed by all of the individual Indians concerned, but they all received the benefit of the legal services rendered. The Court of Claims held that all of the class of "Eastern Cherokee Indians" who had received the benefit of the attorneys' services and were enjoying the fruits of that labor should pay for such services. The contention, however, was made by the Government for the Indians, that the Indian who executed the Rollins contract was without authority to do so. The Court overruled this contention and did so, notwithstanding the fact that the Court of Claims three years prior thereto had held as heretofore mentioned that "it appears that the claimants (Eastern Cherokee Indians involved) are neither a sovereignty nor a body corporate, nor an aggregation of individuals; that all tribal relations between them and the Cherokee nation have been severed, and that they are virtually citizens of the States east of the Mississippi River." *The Eastern Band of Cherokee Indians vs. United States*, 20 C. Cl., 449.

The Cherokee Indians who remained east of the Mississippi River when the Cherokee Nation moved west are known as "Eastern Cherokees." The Choctaw Indians who remained east of the Mississippi River when the Choctaw Nation moved west are known as "Mississippi Choctaws." But the Government only carries on its rolls, on a separate roll, as "The Mississippi Choctaws" those Choctaw Indians who later moved to the western country and were enrolled and allotted as a result of the legislation here in question,

being in numbers 1,643. It is the Indians of this class of Choctaws with whom Winton and associates had contracts. It is this class of Choctaws carried on a separate roll who have received the benefit of their services and are now enjoying the fruits of ten years' labor on the part of their attorneys, Winton and associates.

In the case of the *Eastern Cherokee Indians vs. U. S.*, 27 C. Cls., 1, the Court of Claims held that "sovereigns, corporations and individuals, or aggregations of individuals may be parties litigant. The Eastern Cherokees are not a body politic, but as the former owners of communal property are now severally interested in a common fund." And in the case of the *Potawamic Indians vs. U. S.*, 27 C. Cls., 403, 411, the Court said that:

In this jurisdiction the substance of proceedings rather than the form is the material consideration; and the object which Congress had in the passage of the law will be accomplished if possible.

The Court of Claims very properly said in the case of the *Mille Lac Chippewas vs. U. S.*, 47 C. Cls., 415, 460, that

Courts are constrained to give effect to jurisdictional statutes where the intent of the legislature can reasonably be inferred from the language thereof to vest authority to judicially ascertain the merits of the controversies. *Supervisors vs. Stanley*, 105 U. S. 305. Doubts are to be resolved in favor of jurisdiction, unless some established law is violated. *Endlich on Statutory Construction*, section 430; *Butler and Vale vs. U. S.*, 43 C. Cls., 497.

UNITED STATES--PARTY DEFENDANT.

On March 4, 1911, Messrs. Ralston & Siddons, attorneys for one of the claimants below, filed a motion to make the

United States a party defendant, R. 93. On March 25, 1911, the defendants filed a brief in opposition to said motion. March 30, 1911, argument was had on said motion to make the United States party defendant.

The above motion being undecided on February 20, 1915, the original claimants (appellants here) moved the Court to amend the petition by making the United States a party defendant, and on May 29, 1916, in the opinion of the Chief Justice it was held that "the United States cannot be made defendant in this proceeding," R. 93-94-188.

In the case of *Green vs. the Menominee Tribe of Indians*, 46 C. Cls., 68, and 47 C. Cls., 281, the United States does not in the style of the case appear as a party defendant. The Green case was appealed to this Court and was decided on May 11, 1914, 233 U. S., 558. The style of the case as given in this Court's opinion is as follows: "F. F. Green, appellant, vs. the Menominee Tribe of Indians in Wisconsin, and the United States," the Court of Claims having permitted Green by motion to amend the petition making the Government a party defendant.

The jurisdictional act in the *Menominee case*, 35th Stat., 444-445, did not make the United States a party defendant and did not even authorize or direct the Attorney General to appear and defend the Menominee Indians. Both jurisdictional acts in the present case provide that "*the Attorney General shall appear and defend the said suit on behalf of the said Choctaws*," R. 96-97.

CONCLUSION

The Court below held that the services rendered by Winton and associates in behalf of the Mississippi Choctaws' right to citizenship in the Choctaw Nation were such as to bring those services within the ruling in the Trist case *supra*. In the Trist case the facts showed a secret effort

to lobby a private claim through Congress. *The record in the present case shows printed Memorials presented to Congress and published by Congress as Congressional documents.* These memorials set forth legal argument in behalf of the Mississippi Choctaws' right to citizenship in the Choctaw Nation and were professionally made as an attorney would present a similar case to a court. In fact the record shows that Winton and associates represented the Mississippi Choctaws not only before Congress and its committees but before the Courts, the Dawes Commission and the proper officials of the Choctaw Nation and of the Government of the United States. Whether these services referred to in the findings of fact as made by the Court below come within the ruling of this Court in the *Trist* case *supra* can best be shown by the Memorials and Committee reports made on the question of the rights of the Mississippi Choctaws to citizenship in the Choctaw Nation. Two Memorials are set out in the findings made by the Court below and two more referred to but not set out. These Memorials and Committee reports are Congressional documents with the exception of the Memorial of 1897 mentioned in finding "XII," R. 101. The said Memorial of 1897 and said Congressional documents are set out in the appendix filed in connection with appellants' motion to remand for additional findings and are as follows.

The Memorials of December, 1896, and January, 1897, are set out in the record, R. 155, Memorial September, 1897, set out in the appendix to appellants' Motion to Remand, page

The Congressional documents as described in the Winton Memorial presented to the House of Representatives on

March 15, 1904, H. R. Doc. 614, 58th Cong., 2d Ses., are as follows:

House Record 3080, 54th Con., 2d Ses.
House Bill 10372, Senate Doc. 129, 54th Cong., 2d Ses.
House Doc. 274, 55th Con., 2d Ses.
Public Act 162 approved June 28, 1898, Curtis Act.
House Doc. 426, 56th Cong., 1st Ses.
Senate Doc. 263, 56th Cong., 1st Ses.
Indian Appropriation Act approved May 31, 1900.
H. R. Doc. 2522, 56th Con., 2d Ses.
H. R. Doc 490, 56th Cong., 2d Ses.
Senate Doc. 319, 57th Cong., 1st Ses.
Choctaw-Chickasaw Agreement Public Act 228, approved
July 1, 1902; sections 41, 42, 43 and 44 referring to the
Mississippi Choctaw matter.

See appendix to Appellants' Motion to Remand, page.....

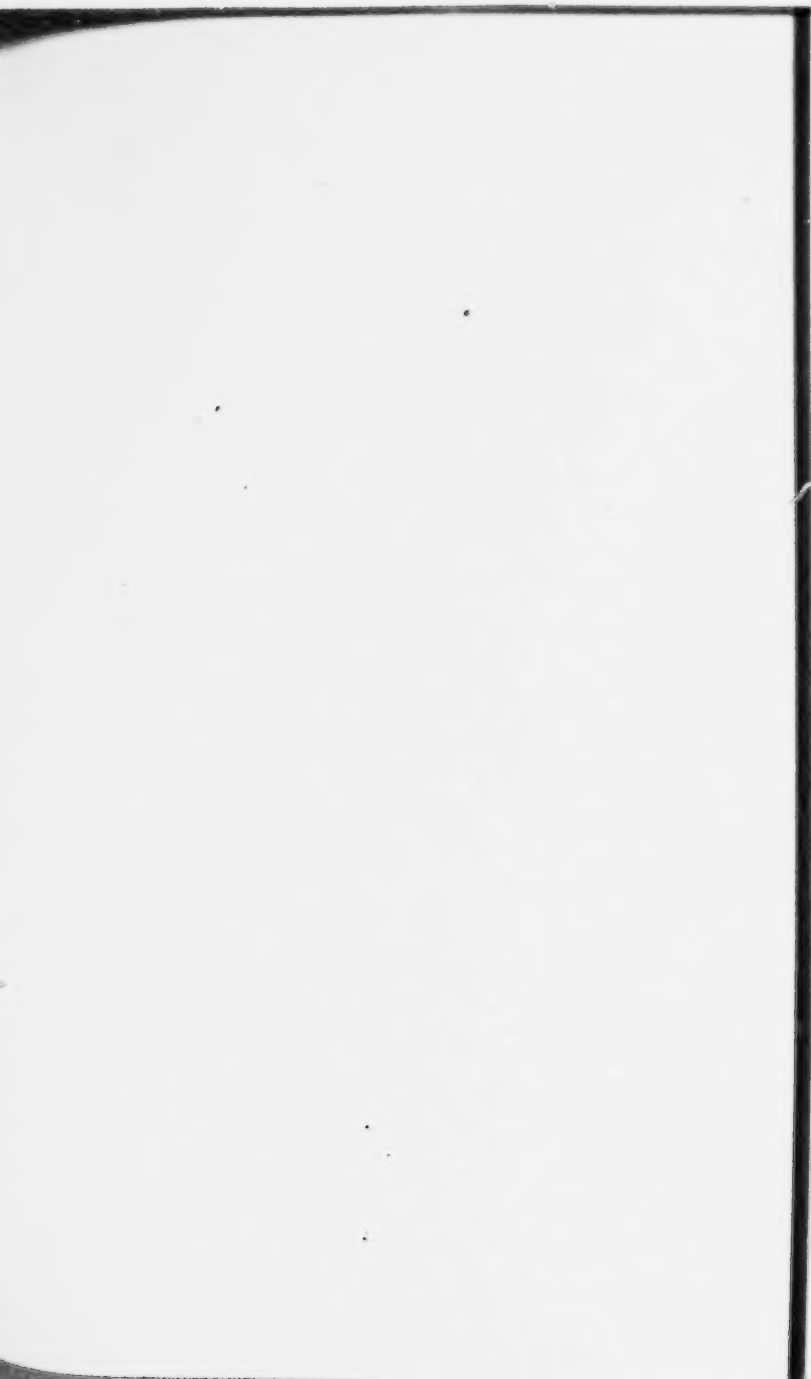
It is therefore submitted that the Court below erred as
set out in the Assignment of Errors and that the decision
of said Court should be reversed and the case remanded
for additional findings with instructions to render judg-
ment thereon, as well as on the findings of fact made by
that Court on May 29, 1916.

Respectfully submitted,

WILLIAM W. SCOTT,
Attorney for Appellants.

I hereby acknowledge receipt of copy of brief hereinbe-
fore set out this day of October, A. D. 1918.

.....
Solicitor General United States.



In the Supreme Court of the United States.

OCTOBER TERM, 1916.

WIRT K. WINTON, ADMINISTRATOR OF the Estate of Charles F. Winton, De- ceased, and Others, appellant,	} No. 924.
v.	
JACK AMOS AND OTHERS, KNOWN AS THE Mississippi Choctaws.	

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR APPELLEES IN OPPOSITION TO APPELLANT'S MOTION FOR WRIT OF CERTIORARI.

Appellant moves for a writ of certiorari requiring the Court of Claims to certify as part of the record:

1. The tentative findings of fact of that court filed December 7, 1914.
2. The intermediate findings of fact filed May 17, 1915.
3. Plaintiff's proposed amendments to said findings of fact of May 17, 1915, filed August 9, 1915.

Appellees submit that the motion should be disallowed for the reasons:

1. That the Court of Claims is required to certify as part of the record only its ultimate findings of fact, and not tentative and intermediate findings of fact as requested by appellant.

2. That the action of the Court of Claims upon all of the proposed amendments filed by plaintiff on August 9, 1915, is fully disclosed by the record as it now stands.

3. That the amendment to the finding of fact specifically requested to be certified as part of the record is fully set out in the answer of the court in its opinion of January 29, 1917 (pp. 12-14), and now a part of the record.

STATEMENT.

This suit was brought in the Court of Claims under section 9 of the act of April 26, 1906, 34 Stat. 140, against the Mississippi Choctaws for services rendered and expenses incurred in the matter of their claims to citizenship in the Choctaw Nation.

The matters with which the present motion has to do concern the finding of the terms and purport of certain contracts between Robert L. Owen and Charles F. Winton, as to their respective and reciprocal rights and duties in reference to the representation of the claimant Indians—contracts in themselves foreign to the main issue.

The Court of Claims in its tentative findings, filed December 7, 1914, made the following finding relative to the two contracts between plaintiff Winton and his associate Owen:

IX.

Thereafter, on June 23, 1896, Robert L. Owen entered into an agreement with Charles F. Winton to proceed to Mississippi and secure

contracts with such Indians there resident as might be entitled to participate in any distribution of the lands or moneys of the Choctaw or Chickasaw Nations, Winton binding himself to secure the evidence, powers of attorney, and contracts as prescribed by said Robert L. Owen, said Owen to provide the funds and Winton to receive one-half of the net proceeds of the contracts. This agreement was modified July 23, 1896, by a second contract between the same parties, in which it was provided that Winton should act as attorney in Mississippi Choctaw cases under his agreement with Owen; that said Owen should have a one-half interest in all of said contracts; and in the event of accident to Winton, that Owen should have full authority to take up all Mississippi cases in place of Winton.

As to this Owen had previously testified as follows:

Immediately after the passage of this act, to-wit, on June 23, 1896, I made a contract with Charles F. Winton, the original of which I will present during the course of my testimony and make it a part thereof. On July 23, 1896, I made a further contract with Charles F. Winton at Cleveland, Okla., modifying the first contract, the original of which I will present during the course of my testimony and make it a part thereof. * * * The first contract referred to binds Charles F. Winton to proceed to Mississippi and secure contracts with such Indians as may be entitled to participate in any distribution of the lands or moneys of the Choctaw and Chickasaw Nations and binding

himself to secure the evidence, powers of attorney, and contracts as prescribed by me, Robert L. Owen. This agreement was based upon the understanding that I should make advances of money necessary to carry on this enterprise, and provided that Winton himself should be entitled to receive one-half of the net proceeds of such cases. * * *

The contract of July 23, 1896, signed by Charles F. Winton and myself at Cleveland, Okla., provides that Winton shall act as attorney in the Mississippi Choctaw cases under agreement of Robert L. Owen; that said Owen has one-half interest in said contracts without exception, and in the event of any accident to Winton, has full authority to take them up in place of Winton, etc. (Rec. p. 290).

On May 17, 1915, the Court of Claims filed findings of fact and conclusion of law dismissing each of the several petitions and intervening petitions, on the ground that in none of the claims was any liability on the part of the Mississippi Choctaws as a class established.

On August 9, 1915, plaintiff filed a motion to amend the findings of fact of May 17, 1915, and the amendment relating to Finding IX upon the following grounds:

FINDING IX.

Amend finding nine, paragraph 4, line 7, by inserting after the word "funds" the following: "and represent the claims of these people (Mississippi Choctaws) before the proper officers of

the United States or Indian governments, and in which representation the said Winton was to assist and cooperate with the said Owen. (Rec. 320-321, Ex. 11)."

The above amendment is based upon the contract between Winton and Owen, and uses practically the same language as does said contract. The finding, as now stated, does not state in any way whatever the services to be rendered by Owen and in fact it infers that Owen was only to provide the funds. It is therefore very material that the Court should make this amendment in order to show what services were contemplated to be rendered by Owen at the very beginning of the struggle, or the "long and somewhat furious contest" to obtain from the Mississippi Choctaws rights to citizenship in the Choctaw Nation. (Rec. Vol. 11, pp. 77, 78).

Defendants filed objections on November 15, 1915, to various proposed amendments to the findings of fact of May 17, 1915, filed by the plaintiff on August 9, 1915, upon the general grounds that the facts requested to be found were already contained in said findings or were immaterial, and specifically urged against the amendment to Finding IX that—

The court is requested to amend Finding IX by inserting after the word "funds" in the seventh line a statement taken from a contract of employment between Messrs. Owen and Winton as showing what they undertook to do for the Indians, in other words, to show by inference that they represented the Mis-

Mississippi Choctaws collectively. It is a fact, however, that when Mr. Winton went to Mississippi instead of making contracts with the Choctaws as a body, he took contracts with individual Indians and filed them as an exhibit to his petition. The reason for this course has been given by Mr. Owen himself, who says: "It was impossible, of course, for the Mississippi Choctaws to act in any other way, since they had no organization that could bind them as a body." (Rec. pp. 2574, 2575).

The contracts were taken in a series from 1 to 834, embracing 2,000 individuals, of whom the court has found that 696 were enrolled and received allotments. (Finding XXXIII.) What Winton and his associates agreed to do for the individual Indians, and the compensation they agreed to give him, is shown by the contracts between Winton and the Indians, and not the contracts between Mr. Owen and Mr. Winton. (Rec. vol. 11, pp. 198, 199).

On May 29, 1916, claimant's motion to amend the findings of fact was allowed in part and overruled in part; the former findings of fact were withdrawn and amended findings of fact were filed with a conclusion of law dismissing each of the several petitions and intervening petitions, with an opinion by Judge Booth and a concurring opinion by Chief Justice Campbell. The motion to amend Finding IX was overruled. That finding is identical with the tentative finding of December 7, 1914, the intermediate finding of May 17, 1915, and the ultimate finding of May 29, 1916.

On July 25, 1916, plaintiff filed a motion for a new trial, which was overruled on December 11, 1916.

On January 8, 1917, plaintiff filed a request for findings of fact on certain questions of fact. The question of fact relating to Finding IX reads:

IX.

Whether or not the original contract made June 23, 1896, and modified July 23, 1896, between Charles F. Winton and Robert L. Owen, provided that said Owen was to represent the claims of the Mississippi Choctaws before the proper officers of the United States and Indian Governments, and in which representation the said Winton was to assist and cooperate with the said Owen. (Rec. 320-321, Ex. 11; vol. 11, pp. 77-78.)

The questions of fact were answered by the Court of Claims in an opinion delivered by Judge Booth on January 29, 1917, now a part of the record. In his answer to question 9 (p. 12), relating to Finding IX of the ultimate findings of fact, he set out in full the two contracts between Winton and Owen of June 23, 1896, and July 24, 1896, and explained that they were not incorporated in Finding IX because they were not in the files of the court, having been withdrawn by the attorney of record for plaintiff, who afterwards died; that they were found among his papers and only returned to the court upon request after the filing of the request for findings of fact on questions of fact by the plaintiff. (Op. of Jan. 29, 1917, pp. 12-14).

ARGUMENT.

The filing of the motion for the writ of certiorari in this case appears to have resulted from exception taken by appellant to the following language of Judge Booth in the first paragraph of his answer to question 9 in the opinion of January 29, 1917:

Finding IX of the court is exactly the same as it appeared in the tentative finding of December 7, 1914. Counsel for claimant, in his brief filed January 21, 1915, made no objection to the same, and in open court on the oral argument stated "No objections" (p. 12).

The objection of appellant to this statement is that while the answer is technically correct as to the tentative findings of December 7, 1914, the court erred in making no reference to plaintiff's proposed amendment to the intermediate finding of May 17, 1915; that for this reason appellant moves the court to certify all of the plaintiff's proposed amendments filed August 16, 1915, to said findings of May 17, 1915. (Appellant's brief, pp. 6 and 7.) The substance of the two contracts of association between Winton and Owen was found by the Court of Claims in almost the identical language of Mr. Owen in Finding IX of the tentative findings of December 7, 1914, and plaintiff made no objection to that finding. It was repeated in Finding IX of the intermediate findings of fact filed by said court on May 17, 1915. Plaintiff thereupon filed a proposed amendment thereto which was overruled. The finding was again repeated in Finding IX of the ultimate findings of

fact of said court filed May 29, 1916. Plaintiff filed a proposed amendment thereto in the form of a question, being a repetition of the amendment previously requested. The court acted upon this proposed amendment by setting out both contracts in full in its reply to question 9, made part of the opinion filed January 29, 1917, which is part of the record here. .

The Court of Claims is required by the rules of this court to certify only its ultimate findings of fact as part of the record on which the case shall be tried in this court. There is no rule of this court which requires the lower court to certify as a part of the record its tentative, or intermediate findings of fact, or proposed amendments to its findings of fact as appellant is now asking this court to have done.

This court has frequently stated that it will not go behind the findings of fact of the Court of Claims (*McClure v. United States*, 116 U. S., 145; *District of Columbia v. Barnes*, 197 U. S. 146, 150; *Sisseton and Wahpeton Indians*, 208 U. S. 561, 566); but if any facts material to the decision of the case, requested to be found, have not been acted upon by that court, such alleged facts may be referred to said court to determine whether or not they are sustained by the evidence. (*United States v. Adams*, 9 Wall, 661; *United States v. Driscoll*, 131 U. S., Appendix clx; *Ripley v. United States*, 220 U. S. 491; *id.* 222 U. S. 144.)

It is therefore apparent from the foregoing statement that all of the material facts requested by appellant to be certified by the Court of Claims are now part of the record, or have been properly excluded therefrom by the lower court.

JOHN W. DAVIS,

Solicitor General.

HUSTON THOMPSON,

Assistant Attorney General.

APRIL, 1917.

○



In the Supreme Court of the United States.

OCTOBER TERM, 1918.

WIRT K. WINTON, ADMINISTRATOR OF THE estate of Charles F. Winton, deceased, and others, appellants, v. JACK AMOS AND OTHERS, KNOWN AS THE Mississippi Choctaws, appellees.	}	No. 123.
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BRIEF OF APPELLEES IN OPPOSITION TO APPELLANTS' MOTION TO REMAND FOR ADDITIONAL FINDINGS OF FACT.

STATEMENT.

Appellants move to remand the record to the Court of Claims for additional findings of fact, to wit:

1. Findings of fact on certain questions of fact contained in a motion filed by the appellants on January 8, 1917, in the Court of Claims, and answered by the said court in an opinion rendered January 29, 1917 (Rec. 201-232), and a finding of fact as to whether the appellants' motion filed in the Court of Claims on August 9, 1915, to amend the court's findings of fact of May 17, 1915, contained requested amendments to findings Nos. IX to XXXIII, inclusive, and XLIII, the same as set out in said questions of fact Nos. IX to XXXIII (Rec. 213-231).

2. A finding of fact as to whether or not the appellants on February 6, 1917, moved the Court of Claims to include in the transcript of the record to be certified here, the finding of fact of the said court made on May 17, 1915, and the appellants' motion made on August 9, 1915, to amend the same, and if so, what action thereon was taken by said court.

3. Findings of fact on question of fact as to whether or not Winton and his associates prepared and presented to Congress the memorials in behalf of the Mississippi Choctaws, which were presented to and made a part of the record of the case in the Court of Claims, at or before the trial of said case and which are set out in the appendix to this motion:

(a) Memorial of September 1, 1897, signed by C. F. Winton, counsel (pp. 131-152).

(b) Petition of February 7, 1900, presented to Congress February 13, 1900 (pp. 178-182).

(c) Memorial presented to Congress April 24, 1902, (pp. 206-212).

(d) Memorial presented to Congress March 15, 1904, (pp. 213-218).

Appellees submit that the motion should be denied for the following reasons:

1. That every fact material to the final disposition of this case has been heretofore found by the Court of Claims and their action thereon is fully disclosed by the record (Court's findings Nos. I-XXXII, inclusive, and XLIII).

2. That the appellants, heretofore, to wit, on March 20, 1917, filed a motion for certiorari requiring the Court of Claims to certify as part of the record here, the findings of fact of said court filed May 17, 1915, and the appellants' proposed amendments to said findings of fact filed August 9, 1915, which motion was denied by this court on April 16, 1917. (See briefs of appellants and appellees on the motion.)

ARGUMENT.

The reasons for moving the court to remand the record, as stated in appellants' brief, do not appear to be sound. They say:

The appellants desire that the claimants' motion, made August 9, 1915, to amend the findings of fact made May 17, 1915, be made a part of the record in this court in order to establish the fact that the questions of fact presented by claimants' "request for findings of fact on certain questions of fact" covered the same questions of fact set out by claimants' said motion to amend and to show that the Court below is in error in stating that said "requests now made have not heretofore been requested in either narrative or alternative form and the reason for this omission does not appear" as it did in the opinion of January 29, 1917, R. 206 (p. 5).

The above statement in almost identical language was made in appellants' brief on motion for certiorari, which reads:

The appellants desire that the findings of fact made December 7, 1914, and the findings

of fact made May 17, 1915, and claimants' motion to amend the findings of fact made May 17, 1915, be made a part of the transcript in order to show to your honorable court that the questions of fact presented by claimants "request for findings of fact on certain questions of fact" covered the same questions of fact covered by claimants' said motion to amend the findings of fact and that the court below is in error in stating that said "requests now made have not heretofore been requested in either narrative or alternative form and the reason for this omission does not appear" as said by the court below at the top of page 6 of the opinion filed therein January 29, 1917 (p. 5).

The court on the motion for certiorari would have remanded the record for additional findings of fact if the reasons presented had been sufficiently strong. There is, therefore, no reason for remanding the record now on the same ground.

The impelling cause for the filing of this motion appears to be a statement made by the Court of Claims in answering the questions of fact propounded by appellants on January 8, 1917, that the requests made in the so-called "questions of fact" had not been heretofore "requested in either narrative or alternative form" (Rec. 206). The Court of Claims had previously referred to appellants' motion of August 9, 1915, and evidently reached the conclusion that the questions of fact were not deducible therefrom. The Government

maintains that the lower court was right in its conclusion.

The Court of Claims, however, carefully examined and answered the so-called questions of fact and in overruling the motion said:

We are unable to conclude, as appears by the foregoing opinion, that the claimants, by the aforesaid motion, have brought to our attention any error of a substantive character which in anywise disturbs the court's conclusions as to the correctness of the findings heretofore announced (Rec. 232).

A careful examination of the appellants' motion of August 9, 1915, to amend the findings of fact of the Court of Claims of May 17, 1915 (appendix to motion, 1-131), and the memorials appended thereto (pp. 131-208), and a comparison with the court's findings of fact numbered I to XXXII, inclusive, and XLIII, will show that all of the material facts therein have been found by the Court of Claims, and this without an examination of the thousands of pages of oral testimony taken under the rules of that court bearing upon alleged facts set out in the appellants' motion of August 9, 1915. All of this testimony was considered by the lower court in making its findings.

The specific findings of fact relating to the memorials set out in appellees' motion (pp. 2,3), are described in the court's findings of fact Nos. I, XII, XXII, and XXIX, except the memorial of March 15, 1904, set out in the appendix to this motion (pp. 213-218), which was an attempt to deprive the Mississippi Choctaws

of the safeguard contained in the proviso to the act of May 31, 1900, invalidating contracts. (See court's finding XXII.) This memorial was presented long after the passage of the act of July 1, 1902, under which the Mississippi Choctaws were enrolled and received their allotments.

If any facts material to the decision of the case have been requested to be found and have not been acted upon by the Court of Claims, this court will remand the record with directions to the lower court to determine whether or not such facts are sustained by the evidence. (*United States v. Adams*, 9 Wall. 661; *United States v. Driscoll*, 131 U. S. Appendix CLIX; *Ripley v. United States*, 220 U. S. 491; *Id.* 222 U. S. 144.) Appellants have failed to point out such facts. The lower court has passed upon all the facts presented bearing upon the alleged services rendered by the appellants, a function peculiarly within the province of that court. This court has frequently said that under such circumstances it will not go behind the findings of said court. (*McClure v. The United States*, 116 U. S. 145; *District of Columbia v. Barnes*, 197 U. S. 146, 150; *Sisseton and Wahpeton Indians*, 208 U. S. 561, 566.)

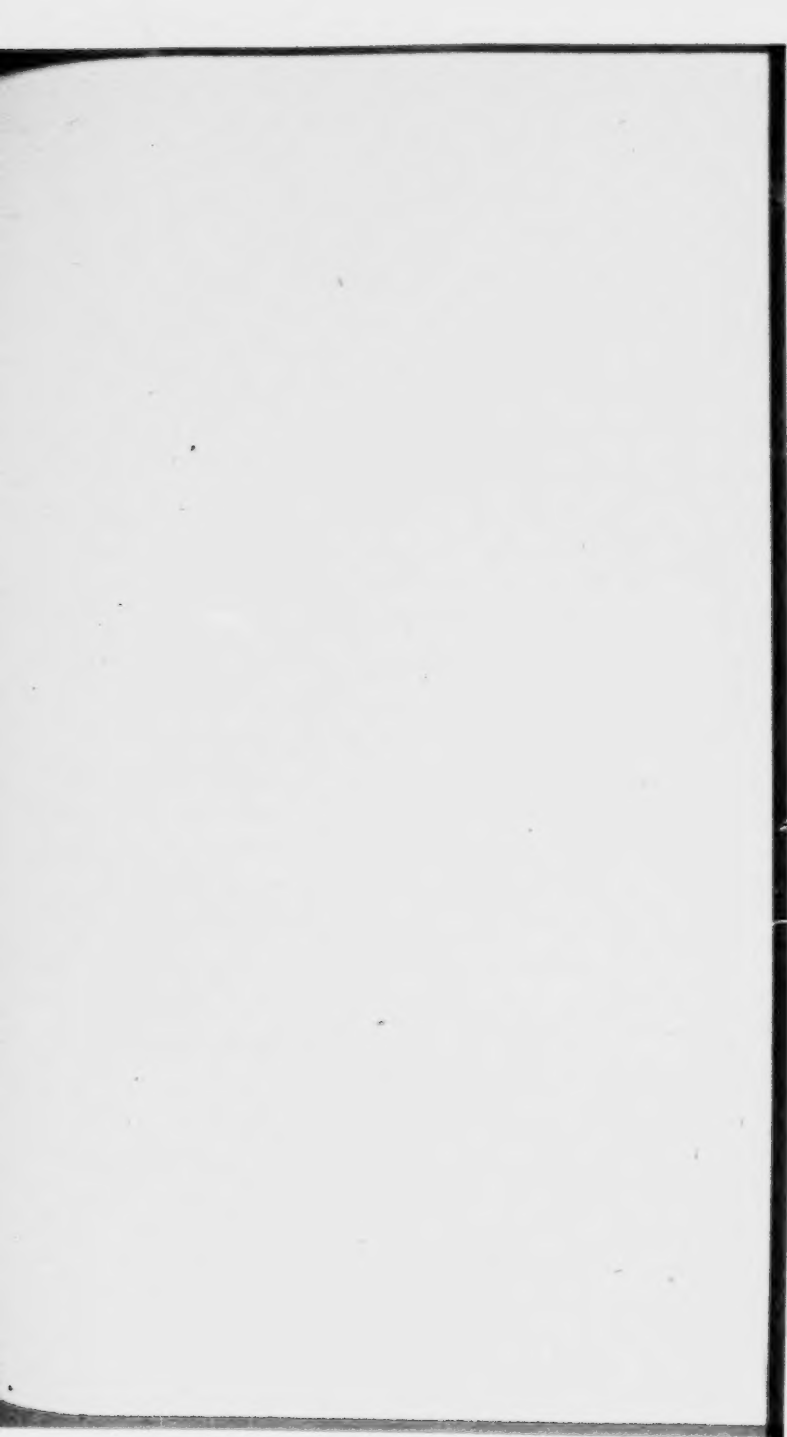
It is respectfully submitted, for the foregoing reasons, that the motion should be denied.

ALEX. C. KING,

Solicitor General.

HUSTON THOMPSON,

Assistant Attorney General.



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In the Supreme Court of the United States.

OCTOBER TERM, 1918.

WIRT K. WINTON, ADMR. OF THE ES- tate of Charles F. Winton, deceased, et al., appellants, v. JACK AMOS AND OTHERS, KNOWN AS the Mississippi Choctaws, appellees.	}	No. 123.
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APPEAL FROM THE COURT OF CLAIMS.

BRIEF ON BEHALF OF DEFENDANTS.

STATEMENT.

This suit was brought under a special act of Congress approved April 26, 1906 (34 Stat. 140), by the appellants against Jack Amos and 2,000 other individual Mississippi Choctaws, citizens of the United States and the State of Mississippi. It is alleged the appellants made 834 different contracts in the State of Mississippi. Suit was brought for alleged services rendered in procuring certain legislation in Congress by which the rights of said Indians under article 14 of the treaty of September 27, 1830, to enrollment as citizens of the Choctaw Nation and allotment of Choctaw and Chickasaw tribal lands were secured (Rec. 1-15, 112, 135).

The original petition was filed October 11, 1906, and the amount claimed, in accordance with the terms of said contracts, was 50 per cent of the amount alleged therein to have been secured to said Indians, one-half of the estimated value of \$25,000,000.

On May 29, 1908 (35 Stat. 457), an act was passed amending the act of April 26, 1906, *supra*, and on November 23, 1911, the appellants filed their second amended petition, claiming under the original and amended acts (Rec. 16-30).

The original petition was filed by Wirt K. Winton as one of the heirs at law of Charles F. Winton, deceased, and by Robert L. Owen for himself and others (Rec. 15). The second amended petition was filed by William H. Robeson, attorney for petitioners (Rec. 15), and Robert L. Owen appearing for himself, and the affidavit to the second petition was made by "James K. Jones, administrator of James K. Jones, deceased," and signed by William H. Robeson (Rec. 30).

The amount claimed by the appellants in their proposed findings in the court below was 15 per cent of \$16,000,000, the estimated value of the entire property acquired by the Mississippi Choctaws by virtue of their enrollment as citizens of the Choctaw Nation, or \$2,400,000 (Rec. 164).

The associates of Charles F. Winton, deceased, were Robert L. Owen of Oklahoma, James K. Jones, deceased, Walter S. Logan of New York, deceased,

Preston S. West of Oklahoma, Frank B. Crosthwaite, and John Boyd of the District of Columbia (Rec. 97).

By article 3 of the treaty of September 27, 1830 (7 Stat. 333), known as the Treaty of Dancing Rabbit Creek, the Choctaws ceded all of their lands east of the Mississippi River and agreed to remove west of that stream during the years 1831, 1832, and 1833.

By article 14 of the treaty each head of a family who desired to remain and become a citizen of the States was permitted to do so on signifying his intention to the agent within six months after the ratification of the treaty, and he thereupon became entitled to receive one section of land, and each unmarried child over 10 years of age to one-half section, and each child under 10 years of age to one-quarter section adjoining the lands of the parent. If they continued to reside on the land for a period of five years from the ratification of the treaty they would receive grants in fee simple. They were not, however, to lose the privilege of becoming Choctaw citizens, if they should ever remove west to the Choctaw Nation, but were not entitled to receive any portion of the Choctaw annuity which arose from the sale of the lands under the treaty of 1830. The mixed bloods who remained in Mississippi, were provided for under section 19 of the treaty, while the full bloods who remained and elected to become citizens of the State, were provided for under article 14, from which the full-blood Mississippi Choctaws have

always been called "fourteenth article claimants" (Rec. 97, 98).

The Choctaws who remained in Mississippi after the removal of the nation to the west were made citizens of the United States and the State of Mississippi many years before the events occurred out of which this litigation arose, and had adopted the dress, habits, customs, and manner of life of the white citizens of the State. They had no tribal or band organizations or laws of their own, but were subject to the laws of the State of Mississippi. No funds were ever appropriated by the Government for their support, although they received a great deal of land. They did not live upon any reservation, nor did the Government exercise any supervision or control over them. Neither the Indian Office nor the Department of the Interior assumed or exercised any jurisdiction over them, and never recognized them either individually or as bands, but regarded them as citizens of the State of Mississippi; and the department held that it had no authority to approve any contracts made with them (Rec. 98, 99).

On December 24, 1889, the Choctaw Nation memorialized Congress to provide for the removal of the Choctaws living in Mississippi and Louisiana to the Choctaw Nation; and nothing having been done by Congress, the Choctaw council in 1891 appropriated funds and created a commission for their removal and subsistence, and during the same year 181 were removed and admitted to citizenship in the Choctaw Nation (Rec. 99).

By the act of March 3, 1893 (27 Stat. 645), Congress created the Commission to the Five Civilized Tribes, known as the "Dawes Commission," for the purpose of procuring through negotiation the relinquishment of the tribal title to the lands of the Five Civilized Tribes in the Indian Territory by cession to the United States or allotment in severalty to the members of said tribes with a view to the ultimate creation of a State or States out of the country embraced in said territory. By the act of June 10, 1896 (29 Stat. 321), Congress directed the said commission to make a roll of the Five Civilized Tribes, and required applicants for enrollment to file their applications with the commission within three months from the passage of the act, with right of appeal from its decision to the United States courts (Rec. 99, 100).

On June 23, 1896, Robert L. Owen entered into an agreement with Charles F. Winton, by which said Winton agreed to proceed to Mississippi and to secure contracts with Indians living there who were entitled to participate in the distribution of Choctaw-Chickasaw lands and moneys, binding himself to secure evidence, powers of attorney, and contracts as prescribed by said Owen, who was to provide the funds and Winton was to receive one-half of the net proceeds of the contracts. This agreement was modified on July 23, 1896, by a second agreement between the same parties, which provided that Winton should act as attorney in Mississippi-Choctaw cases and that Owen should have a one-half interest in all of said

contracts, and that in the event of accident to Winton, Owen should have full authority to take up all Mississippi-Choctaw cases in his place (Rec. 100).

Immediately thereafter Winton went to Mississippi and during the year 1896 and the following years secured contracts with approximately 1,000 full-blood Mississippi Choctaws, some of said contracts having been taken in the name of Winton and some in the name of Owen. Under the terms of these contracts Winton and Owen agreed to secure the rights of citizenship for said Indians in the Choctaw Nation and the right to participate in the allotment and distribution of the lands and funds of the Choctaw-Chickasaw Nation for a fee of one-half the net interest of each allotment in any allotment thereafter secured. These contracts were subsequently abandoned by Owen and Winton because they were void and nonenforceable under the acts of June 28, 1898, and May 31, 1900, and new contracts were thereafter taken in the name of Charles S. Daley, an attorney of New York City. We will refer to the last set of contracts further on. At the time of the making of these contracts the full-blood Mississippi Choctaws were extremely poor, living under insanitary conditions, and working at manual labor for daily wages. Their children were not permitted to attend schools for the whites and were denied all social and political privileges (Rec. 100).

Early in 1896 Robert L. Owen spoke to Hon. John Sharp Williams, the Representative in Congress for

the Fifth Congressional District of Mississippi, where practically all of the full-blood Choctaws in Mississippi lived, with reference to the possible rights of such Indians to participate in the partition of the Choctaw lands in Oklahoma, and at that time submitted to Mr. Williams a copy of the Dancing Rabbit Creek Treaty, and called his attention to article 14. This was the first time the matter had been called to the attention of Mr. Williams. Thereupon, on February 11, 1896, Mr. Williams wrote to the Commissioner of Indian Affairs stating that a great many Choctaws were living in his district and made inquiry as to whether they would come in for anything under the act then pending for a division of the Choctaw lands in severalty. On November 10, 1896, Mr. Williams again wrote to the Commissioner asking information as to the rights of the Choctaws who had remained in Mississippi after the tribe had removed, stating that he had no information on the subject himself. The Commissioner of Indian Affairs referred him to the Commission to the Five Civilized Tribes. Thereafter Mr. Williams suggested or prepared, in conjunction with Senator Walthall in the Senate, and Representative Curtis, chairman of the subcommittee of Indian Affairs, in the House, all the legislation passed in Congress for the benefit of the Mississippi Choctaws until March 3, 1903, when his county was placed in another congressional district and he ceased to represent the fifth district of Mississippi in

the House of Representatives; but after that Mr. Williams was still consulted by the chairman or Member in charge of pending bills upon all legislation concerning Mississippi Choctaws (Rec. 100, 101).

In September or October, 1896, Mr. Owen appeared before the Commission to the Five Civilized Tribes in behalf of Jack Amos and 97 other full-blood Choctaws living in Mississippi, and attempted to secure their enrollment under the act of June 10, 1896, which authorized the commission to enroll Indians residing in the Indian Territory who had filed their applications within three months from the date of the passage of that act, with right of appeal to the United States District Courts of the Territory. The commission refused to enroll them on the ground that they were not residents of the Indian Territory; whereupon an appeal was taken by Mr. Owen to the United States Court for the Central District of the Indian Territory, where the ruling of the commission was affirmed. This decision was afterwards indirectly affirmed by this court on May 15, 1899, in *Stephens v. The Cherokee Nation* (174 U. S. 445), where it was held that the court was without jurisdiction to review the decisions of the citizenship courts of the Territory (Rec. 102).

Following the action of the Dawes Commission Charles F. Winton presented three memorials to Congress, in December, 1896, January, 1897, and September, 1897, in which Congress was requested to enact legislation permitting the Choctaws residing in

Mississippi to be enrolled as Choctaw citizens with all the rights, privileges, and immunities of such citizenship, without removal to the Choctaw Nation in the Indian Territory (Rec. 101, 155-159).

At the same time the opinion was rendered in the case of *Jack Amos and others v. The Choctaw Nation*. The same territorial court delivered an opinion in the case of *E. J. Horne v. The Choctaw Nation*, in which the claimant, a Mississippi Choctaw, had removed to the Choctaw Nation prior to the date of his application for enrollment, and the court held that he was entitled to such enrollment under the provisions of article 14 of the treaty of 1830; that, having proved his descent from an ancestor who had complied with the provisions of the treaty, his degree of Indian blood was immaterial.

In compliance with a resolution drawn by Mr. Owen and introduced by Senator Walthall, of Mississippi, and passed by the Senate on February 11, 1897, the Secretary of the Interior transmitted to that body (1) a copy of the memorial of the Choctaw Nation of December 24, 1889, to Congress; (2) a copy of the deposition of Greenwood Leflore taken on February 24, 1843, before United States Commissioners Clayborne and Graves concerning the importance of article 14 of the treaty of 1830; (3) an extract from the report of United States Commissioners Murray and Vroom, to the President on July 31, 1838, to the effect that in a great number of cases Choctaws entitled to remain in Mississippi

had been forced to remove from reservations granted to them under article 14, the Secretary stating that the last two papers called for were copied from the printed record in the case of the *Choctaw Nation v. The United States*, No. 12742, Court of Claims; (4) in reply to the last inquiry of the resolution it was stated that no provision had been found in the Choctaw treaties of 1837, 1854, 1855 or 1868 by which the Mississippi Choctaws had relinquished any rights of Choctaw citizenship that they may have acquired under article 14 of the treaty of 1830, or otherwise (Rec., 103, 105).

On February 27, 1897, Mr. Allen, of Mississippi, introduced a bill in the House of Representatives directing the Dawes Commission to enroll, without delay, as citizens of the Choctaw Nation, the Choctaws residing in Mississippi, providing that such Choctaws should possess at least one-eighth of Choctaw blood (H. R. 10372, 54th Cong., 2d sess.). During the consideration of the bill by the Committee on Indian Affairs of the House, Mr. Owen made an argument before the committee and a favorable report was made by the committee on the bill, but it never passed either House of Congress (Rec., 103).

The Indian appropriation act of June 7, 1897 (30 Stat., 83), contained an item directing the Dawes Commission to "examine and report to Congress whether the Mississippi Choctaws under their treaties are not entitled to all the rights of Choctaw citizenship, except an interest in the Choctaw annuities,"

which was inserted at the instance of Senator Petigrew as a substitute for an amendment offered by Senator Walthall (Rec., 103). After the passage of this act Mr. Owen appeared before the commission in the interest of the Mississippi Choctaws with whom he had contracts (Rec., 104).

On January 28, 1898, the commission, as required by the act of June 7, 1897, made a report to Congress, in which, after referring to its decision requiring the removal of Mississippi Choctaws before they could acquire rights of citizenship in the Choctaw Nation and its affirmance by the citizenship court in the *Jack Amos case*, said that as the time for making application to the commission for enrollment had expired it would be necessary either to extend the time or create a new tribunal for that purpose (Rec. 104).

On June 28, 1898, Congress passed an act, commonly known as the Curtis Act, section 21 of which provided for the making of a roll of the Five Civilized Tribes by the Dawes Commission and contained the following item relating to the Mississippi Choctaws:

Said commission shall have authority to determine the identity of Choctaw Indians claiming rights in the Choctaw lands under article fourteen of the treaty between the United States and the Choctaw Nation concluded September twenty-seventh, eighteen hundred and thirty, and to that end may administer oaths, examine witnesses, and perform all other acts necessary thereto and make report to the Secretary of the Interior. * * *

No person shall be enrolled who has not heretofore removed to and in good faith settled in the nation in which he claims citizenship: *Provided, however,* That nothing contained in this act shall be so construed as to militate against any rights or privileges which the Mississippi Choctaws may have under the laws of or the treaties with the United States.

The proviso to the above act, saving the rights of Mississippi Choctaws, was prepared by Representative John Sharp Williams and given to Mr. Curtis, in charge of the bill, who offered it as an amendment (Rec. 104).

Thereafter Mr. Owen prepared a circular, dated July 1, 1898, addressed "To the Mississippi Choctaws" and signed by Charles F. Winton, in which he informed the said Indians of the fact that he had induced Senator Walthall to pass a resolution through the Senate to secure information, and that he had solicited Mr. Allen, of Mississippi, to prepare the inclosed report (No. 3080 H. R., 54 Cong., 2d sess.); and that by the help of Mr. Williams, Senator Walthall, and Mr. Allen, he had the item directing a report by the Dawes Commission on the rights of said Indians inserted in the act of June 7, 1897. The circular then referred to the report of the commission as required by said act, and the provision in the act of June 28, 1898, relating to Mississippi Choctaws and also to the fact that both the commission and Judge Clayton had held that only Mississippi Choctaws who had removed and settled in good faith in the Choctaw Nation were entitled to citizenship, but that under the authority

of an item in the Indian appropriation bill allowing an appeal from this decision, he would appeal to this court to test their rights. The circular then went on to call attention to the importance of furnishing proof that each claimant was a descendent of a fourteenth-article claimant, and that he had secured a list of such claimants which he would make available to his clients as soon as practicable (Rec. 105, 106).

On December 2, 1898, the Dawes Commission, by printed circular and handbills sent through the mails and posted in conspicuous places throughout the neighborhoods in which the Choctaws in Mississippi were living, officially notified them of the time and places at which the commission would hear applications for identification under the Curtis Act, and explained in detail all of the steps necessary to secure identification under said act. The circular was addressed "To the Mississippi Choctaws," and set out the provisions of the act of June 28, 1898, authorizing their identification, and article 14 of the treaty of 1830; and in addition to giving them all the information necessary as to the proof they would be required to furnish they were informed that no charge would be made against any person appearing before the commission, and that no person outside of its own clerical assistants was in any degree authorized to speak for or act with it (Rec. 106, 107).

Thereafter the commission, through one of its members, A. S. McKennon, visited Mississippi with several clerks and stenographers and identified and

made a roll of 1,923 Mississippi Choctaws as being entitled to citizenship in the Choctaw Nation under article 14 of the treaty of September 27, 1830. There were, according to the estimate of the commission, not more than 2,500 descendants of Choctaws who had remained in Mississippi under article 14 of said treaty then living in that State. The rule adopted in making the roll was that the fact that a claimant was a full-blood Choctaw, whose ancestors were living in Mississippi at the date of the treaty, was sufficient evidence to justify placing his name on the roll as a Mississippi Choctaw under section 21 of the Curtis Act. This roll, commonly known as the "McKennon roll," was approved by the commission and forwarded with a report dated March 10, 1899, to the Secretary of the Interior, but was never approved by him as required by the Curtis Act. The commission attempted to withdraw the roll on December 20, 1900, but a duplicate copy had been retained in the Indian Office. The roll, however, was formally disapproved by the Secretary on March 1, 1907. The work of Commissioner McKennon in making this roll, covering a period of about three weeks, was interfered with and retarded by Charles F. Winton, who endeavored to prevent Indians from appearing for identification. (Rec. 107, 108.)

The commission in its report referred to the fact that certain white people (Charles F. Winton among the number) had secured contracts for one-half of the lands and moneys they might obtain with nearly every family; that the Indians were too ignorant to

appreciate what they were doing; and that such persons could render them no aid in securing their rights under the treaty; that Hon. John S. Williams, with the aid of Senator Walthall, had secured the legislation under which the commission was acting and could be trusted to look after their interests. Mr. Owen furnished Commissioner McKennon with a list of 16,000 Choctaws which he had prepared in 1899 while acting as attorney in the case of the *Choctaw Nation v. The United States*, which formed a part of the record in said case, and which aided Mr. McKennon in his official work (Rec. 107, 108).

Shortly after the McKennon roll was transmitted to the Secretary of the Interior, the Dawes Commission discovered that it was very inaccurate, containing many names that should have been omitted, and omitting many names of Indians who should have been identified. For these reasons another party was sent out by the commission to make a more accurate and complete roll of Mississippi Choctaws under the act of 1898. Hearings were commenced at Hattiesburg, Miss., in December, 1900, and were resumed at Meridian, Miss., on April 1, 1901, from which date continuous sessions were held at that and other places in Mississippi until the latter part of August of that year (Rec. 108, 109).

On February 7, 1900, Winton and his associates presented another memorial to Congress praying that the rights of Mississippi Choctaws should be so construed as to give them the rights of Choctaw citizen-

ship without removal, or that they should be permitted to have their rights determined by the courts. No action was taken by Congress on this request (Rec. 109).

The Indian appropriation act of May 31, 1900 (31 Stat. 236), contains two provisos, which read:

Provided, That any Mississippi Choctaw duly identified as such by the United States Commission to the Five Civilized Tribes shall have the right, at any time prior to the approval of the final rolls of the Choctaws and Chickasaws by the Secretary of the Interior, to make settlement within the Choctaw-Chickasaw country, and on proof of the fact of bona fide settlement may be enrolled by the said United States Commission and by the Secretary of the Interior as Choctaws entitled to allotment: *Provided further*, That all contracts or agreements looking to the sale or incumbrance in anyway of the lands to be allotted to the said Mississippi Choctaws shall be null and void.

The first proviso was substantially the same as an amendment to the bill requested in a memorial of Winton and his associates to Congress on April 4, 1900. The last proviso was prepared by Mr. Williams and its passage secured by him with the assistance and cooperation of Senator Platt, they having been informed that a number of lawyers and other persons were securing contracts with the Mississippi Choctaws looking to the payment of certain shares of the prospective allotments to said Indians (Rec. 109).

The Dawes Commission, instead of construing the act of May 31, 1900, as a confirmation of the McKennon roll of 1899, construed it as prospective in its operation, and thereafter required all applicants for enrollment to furnish proof of descent from Choctaw Indians who had remained in Mississippi and received patents of land under article 14 of the treaty of 1830. This construction reversed the rule of evidence adopted by the commission in making the McKennon roll, that the ancestors of full-blood Choctaws then living in Mississippi should be presumed to have fully complied with the technical requirements of article 14 of said treaty. The result of this construction was that only six or seven applicants claiming as Mississippi Choctaws were enrolled under the act, although from 6,000 to 8,000 applications were filed in 1900 and 1901. The Secretary of the Interior on August 26, 1899, and again on October 19, 1900, had directed the Dawes Commission to follow the full-blood rule of evidence recommended in the report of the commission dated March 10, 1899, in the identification of Mississippi Choctaws (Rec. 110).

On June 13, 1900, the Choctaw Cotton Co. was organized and incorporated under the laws of the State of West Virginia for the purpose of financing the removal of the Mississippi Choctaws to the Indian Territory and acquiring locations there for them. Two-thirds of the stock was issued to said Owen and one-third to said Winton. Subsequently all contracts theretofore taken by the said Winton and his

associates were assigned to said company. On August 7, 1911, the company was dissolved and its charter annulled and surrendered by decree of the Circuit Court of Kanawha County, W. Va., and the stock retained in the names of Owen and Winton has been filed in the Court of Claims (Rec. 110).

On February 7, 1901, an agreement was entered into between the Dawes Commission and the Choctaw and Chickasaw Nations which provided for making tribal rolls on which allotments of land and distribution of tribal property of the two nations should be based, section 13 of which provided as to the Mississippi Choctaws that the McKennon roll should be confirmed and the full-blood Choctaws living in Mississippi, and those who had removed to Indian Territory, whose names have been identified by the commission, shall alone constitute the Mississippi Choctaws entitled to benefit under the agreement. Section 13 of the agreement was amended as the result of a conference between representatives of the Interior Department, the Dawes Commission, and the two tribes, so as to strike out confirmation of the McKennon roll and to require proof of identification under the acts of June 28, 1898, and May 31, 1900, instead of the full-blood rule of evidence. This agreement was never ratified (Rec. 110, 111).

During the making of the roll of Mississippi Choctaws, commenced April 1, 1901, at Meridian, Miss., by the Dawes Commission, which held "continuous sessions there and at other places in Mississippi until

August, 1901, the conduct of Winton and his associates and James E. Arnold and Louis P. Hudson increased the work and retarded the progress of enrollment. Being advised by Owen and believing the roll made by Commissioner McKennon in 1899 was final and constituted a favorable judgment in behalf of the individual Choctaws whose names appeared thereon, the said Winton and his associates advised all Indians who had previously been enrolled not to appear again for identification (Rec. 111).

Winton, acting upon the advice of counsel, on June 20, 1901, began taking new contracts with individual Mississippi Choctaws living in Mississippi, in lieu of all contracts theretofore taken by him and his associates. The later contracts, instead of stipulating for one-half of their respective allotments, stipulated for a sum of money equal to one-half of the net recovery of and for said Indians in lands, money, or money values, and, unlike the earlier contracts, provided for the removal of Mississippi Choctaws from Mississippi to the Choctaw Nation. The later contracts were taken in a series from 1 to 834, beginning with the contract of Jack Amos, one of the defendants in this suit, and embraced about 2,000 persons. These contracts were also assigned to the Choctaw Cotton Co. (Rec. 112).

While the preparation of the identification roll of the Mississippi Choctaws was still in progress an agreement was entered into between the Dawes Commission and the Choctaw and Chickasaw Nations,

by sections 41, 42, 43, and 44 of which provision was made for the identification and enrollment of Mississippi Choctaws entitled, under article 14 of the treaty of 1830, to participate in the allotment and distribution of Choctaw-Chickasaw lands and funds. This agreement, after amendment in Congress, was approved by the act of July 1, 1902, and ratified by the Choctaws and Chickasaws on September 25, 1902 (32 Stat. 641). It was under this agreement, known as the Choctaw-Chickasaw supplemental agreement, that practically all of the Mississippi Choctaws were enrolled and secured their rights to allotment of Choctaw-Chickasaw lands. Section 41 of the agreement, as signed by the parties, did not contain the full-blood rule of evidence—that is, that full-blood Choctaws living in Mississippi should be presumed to be descendants of Choctaws who had complied with the requirements of article 14 of the treaty of 1830. This rule of evidence was subsequently introduced as an amendment by Mr. Curtis and was drafted by Assistant Attorney General Van Devanter and Mr. McMurray, attorney for the Choctaw Nation. Winton and his associates on April 24, 1902, presented a memorial to the Senate, the principal object of which was to have the discredited McKennon roll confirmed. This part of the memorial was embraced in a bill introduced in the Senate by Senator Harris, where it was adversely reported on (Rec. 112-114).

The passage of the act of July 1, 1902, *supra*, ratifying the said supplemental agreement and

amendments to sections 41 to 44, inclusive, was opposed by Mr. Owen and the associates of Winton, who protested against the conditions contained in the said amended sections relating to the Mississippi Choctaws as finally adopted (Rec. 114). The objections to the agreement included the full-blood rule of evidence contained in section 41 thereof (Rec. 10, 11, 12), 'under which practically all of the Mississippi Choctaws were identified and enrolled as citizens of the Choctaw Nation (Rec. 112).

The Dawes Commission received approximately 25,000 applications for enrollment as Mississippi Choctaws, of whom 2,534 were identified as entitled to such enrollment, and of this number, so identified, 956 failed to remove to the Indian Territory, or to submit proof of their removal and settlement within the time prescribed by law. The total number identified and finally enrolled, who received allotments as members of the Choctaw Nation, was 1,578; of these the names of only 833 appear on the roll of March 10, 1899 (the McKennon roll), and only 696 had contracts with Winton and his associates (Rec. 115, 116). Of those finally enrolled under the act of July 1, 1902, 137 were designated as new-born Mississippi Choctaws (Rec. 28, 132), and 187 were full-blood Mississippi Choctaw minors, who were enrolled under the provisions of section 2 of the act of April 26, 1906 (34 Stat. 137, 138)—a provision relating to all of the Five Civilized Tribes (Rec. 115).

All the contracts of Winton and his associates with Mississippi Choctaws were made from 1896 to 1901 with individual Choctaws living in Mississippi (Rec. 100, 112).

The Indian appropriation act of March 3, 1903 (32 Stat. 982), contained a proviso appropriating \$20,000 to aid indigent and identified full-blood Mississippi Choctaws to remove to the Indian Territory, under which a special disbursing agent of the Dawes Commission was sent to Mississippi and succeeded in removing 420 such Indians to the Indian Territory. These Indians were maintained until they were subsequently placed on allotments, after which they were supplied with tools and other implements and rations for six months, and all of the expenses were paid by the Government (Rec. 115).

Winton and his associates in the month of March, 1903, removed 22 Mississippi Choctaws to the Indian Territory (Rec. 131, 132). The remainder of those who were enrolled and received allotments were removed at the expense of other parties (Rec. 121, 122, 123, 125, 127), or removed at their own expense.

The funds derived from sales of allotted lands of enrolled Mississippi Choctaws which were subject to restrictions upon alienation described in section 1 of the act of May 27, 1908 (35 Stat. 312), are held by the Government to the credit of individual Indians entitled thereto. All other funds belonging to said Indians are held as tribal funds. The Mississippi Choctaws, as required by section 41 of the act of

July 1, 1902, *supra*, are carried on a separate roll (Rec. 116).

The Court of Claims, upon the foregoing facts, held that there was no liability, under the jurisdictional act, on the part of the Mississippi Choctaws to pay the claim, and that there was no merit in the claim itself, and dismissed the petition. The chief justice, in a concurring opinion, took the further position that the Court of Claims had no jurisdiction of the subject matter of the suit. From this judgment of the Court of Claims an appeal was taken to this court.

ARGUMENT.

JURISDICTION.

When the contracts of employment were entered into between Winton and his associates and individual Mississippi Choctaws, living in Mississippi, the Indians were and had been for over a half a century citizens of the United States and the State of Mississippi, with all the rights, privileges, and immunities possessed by white citizens of that State, and the Government had no supervision or control over them or their contracts (Rec. 98, 99).

The contracts themselves recognized the status of the individual Indians with whom they were made as "being United States citizens" (Rec. 133). These contracts were submitted with appellants' petition as the evidence and basis of employment of Winton and his associates by the Mississippi Choctaws. The petition states "that the service was rendered not to

one individual, but to every individual who was enrolled and who obtained the right to this great estate" (Rec. 14).

There were 1,578 Mississippi Choctaws who were enrolled and received allotments of Choctaw-Chickasaw lands, and of these only 696 had contracts with Winton and his associates. There were 2,534 Mississippi Choctaws identified, but of these 956 did not remove from Mississippi, or if they did were never enrolled (Rec. 115, 116). Appellants' contracts provided for removal of the Indians from Mississippi to the Indian Territory, but they only removed 22 and then abandoned that stipulation of their contracts (Rec. 131, 132). The act of April 26, 1906, provided that suit should be brought "against the Mississippi Choctaws," and that judgment, if any, should be rendered on the principle of *quantum meruit*, in such amount or amounts as may appear equitable or justly due, and that the judgment, if any, should be paid from funds now or heretofore due such Choctaws by the United States (Rec. 96). Suit was instituted on October 11, 1906, by Winton and his associates. Thereafter the act of May 29, 1908, was passed amending the act of April 26, 1906, by allowing Vernon, Bounds, and Howe to intervene for themselves and their associates or assigns, and providing that the "judgments, if any, shall be paid from funds now or heretofore due such Choctaws *as individuals* by the United States"; and the claims of Winton and his associates and Vernon, Bounds, and Howe

and their associates were made liens upon the lands allotted to the Mississippi Choctaws (Rec. 96, 97). Thereafter an amended petition was filed by Winton and his associates claiming also under the provisions of the act of May 29, 1908.

The defendants contend that the jurisdictional act, as amended, clearly indicated that the suits were to be brought and the judgments rendered against the individual Mississippi Choctaws with whom appellants had their contracts. This position is strengthened by the fact that the funds derived from the sale of the allotments of Mississippi Choctaws were held by the Government to the credit of individual Indians (Rec. 116).

The Mississippi Choctaws, as a class, embraced not only those who received allotments, but also those who did not, the latter being approximately 1,000 persons.

Appellants in their petition claim not only against those who were enrolled and received allotments, but also against those who secured the right to receive allotments (Rec. 14). Of the 1,578 who received allotments the appellants can only show employment by 696 (Rec. 116). Therefore, under no aspect of the case were appellants authorized to represent the Mississippi Choctaws as a class.

Congress has no power to require citizens of a State to appear as defendants in the Court of Claims in respect to their private contracts, over which the Government has no control or supervision (Rec. 99).

Appellants abandoned their first set of contracts because these stipulated for one-half of the prospective allotments of said Indians in violation of the provisions of two acts of Congress and were not enforceable in the State courts (Rec. 100). On the advice of counsel they then took the contracts relied on in this suit, which stipulated for a sum equal to one-half of the value of their prospective allotments, the object being to secure contracts on which suits could be enforced in the State courts.

It is true that suits on such contracts would not have reached the allotments of the Indians, not subject to alienation by statute, but that was no bar to the jurisdiction of the State courts to consider the claims, for if judgment had been rendered against one of these defendants it might have been collected otherwise. (*Ke-tuc-e-num-quah v. McClure*, 122 Ind. 541.)

The fifth amendment to the Constitution of the United States declares that no person shall be deprived of life, liberty, or property without due process of law.

This article was construed in *Murray's Lessee et al. v. Hoboken Land Improvement Co.* (18 How. 272, 276), where the court said "due process of law" meant the same thing as the words "by the law of the land," and that the amendment is a restraint on legislative as well as the executive and judicial powers, and can not be so construed as to leave Congress free to make any process "due process of law" by its mere will.

Mr. Cooley, in his work on the principles of constitutional law, third edition, page 244, says, "Whatever the State establishes will be due process of law, so that it be general and impartial, and disregard no provision of the Federal law or State constitution."

The compiled laws of the State of Oklahoma provided for the filing of suits in the State courts and the issuance and delivery of summons (secs. 5591, 5598), and that suits for any estate or interest in lands should be brought in the county where the lands are situated (sec. 4985); and that in order to make a judgment a lien upon lands a certified copy of the judgment must be recorded in the office of the registrar of deeds of the county in which the land is situated (sec. 5622). The constitution of Oklahoma (art. 2, sec. 19) declares "that the right of trial by jury shall be and remain inviolate."

The seventh amendment to the Constitution of the United States declares "that the right of trial by jury shall be preserved"; and the Judicial Code (sec. 235) declares: "The trial of issues of fact in the Supreme Court in all actions at law against citizens of the United States, shall be by jury."

This court held many years ago that the Mississippi Choctaws and other Indians who were citizens of the United States come within the jurisdiction of the State and Federal local courts, and are entitled to all the rights in those courts possessed by other citizens. (*Wilson v. Wall*, 6 Wall. 83; *Elk v. Wilkins*, 112 U. S. 94; *Felix v. Patrick*, 145 U. S. 332.) Prior

to the entry of Oklahoma into the Union, November 16, 1907, appellants could have brought suit on their contracts in the United States courts provided for the Indian Territory. (*Stevens v. Cherokee Nation*, 174 U. S. 445, 449.)

The decision of this court in *Green v. The Menominee Tribe of Indians* (233 U. S. 558, 568) is conclusive in the instant case.

That suit was brought in the Court of Claims under a special act of Congress (47 C. Cls. 281) for supplies furnished to individual members of the tribe to enable them to engage in logging operations upon the faith of an alleged verbal promise by the tribe to guarantee payment. The lower court dismissed the claim against the tribe because the contract was not in writing and approved, as required by sections 2103-2106 of the Revised Statutes, and dismissed the claims against the individuals because such suits came properly within the jurisdiction of the State courts of Wisconsin.

The Court of Claims (pp. 284, 285) said:

It will be observed that the provisions of section 2103 of the Revised Statutes referred to apply only to those Indians who were "not citizens of the United States." *It follows that if they were citizens of the United States at the time of the alleged agreement the courts of Wisconsin had jurisdiction to adjudicate such claims, whether such contract be treated as express or implied.* (*Stacy v. La Belle*, 99 Wis. 524; *Ingraham v. Ward*, 56 Kans. 550, and cases there cited.) If they were not citizens of the United

States, then the agreement so made can not be enforced in this court, as the same was not reduced to writing with the approval of the Secretary of the Interior, as provided by statute. [*Italics ours.*]

The court, discussing the opinion of the Court of Claims, said that court held that the jurisdictional act created no new right in favor of the petitioner, except the waiving of the statute of limitations, and simply afforded the plaintiff a forum for the adjudication of his claim and "From this premise the conclusion was deduced that the act gave no right to sue the United States and conferred no jurisdiction upon the court below over claims against an Indian as a mere individual aside from his membership of the tribe"; that the Court of Claims "consequently decided that it was not concerned with any supposed liability of the individual defendants as citizens of the United States resulting from their purely individual and personal contracts." The conclusion of the Court of Claims, indorsed by this court, was to the effect that the lower court had no jurisdiction of claims against individual Indians, because there existed in the State of Wisconsin a forum for their adjudication.

The cases cited by appellants in support of the jurisdiction of the court, with the exception of *Butler and Vale v. The United States* (43 C. Cls. 497), were suits against the United States by tribes of Indians, where the fund was created or judgment

rendered through the efforts of attorneys. Its distribution was under the control of the Court of Claims, and the jurisdictional act provided that the Court of Claims should fix the fees of the attorneys. The suit of Butler and Vale *supra*, was brought against the United States under a special act of Congress to recover compensation for services rendered to an Indian tribe in securing legislation in Congress. The attorneys in that case were employed by the tribe and the contract was approved as required by sections 2103-2106 of the Revised Statutes, and hence has no application to the instant case.

The contracts between appellants and the individual Indians provided for one-half of the value of the net recovery of, or for, the parties of the first part in land and money, or money values, as Mississippi Choctaws, or as citizens of the Choctaw Nation, one-third of the said compensation to become due one year and one day from the date of the patents issued to the parties of the first part, one-third three years and one day from the date of said patent, and the remaining one-third five years and one day from the date of said patent.

This court has held that allotments to Indians, notwithstanding restrictions upon their sale, became vested in fee simple in the allottees upon the receipt of their patents (*Libby v. Clark*, 118 U. S. 250-255; *Ballinger v. Frost*, 216 U. S. 240-250).

At the time the alleged claims which constitute the basis of this suit became due, the State of Okla-

homa had been admitted to the Union and had adopted a constitution and enacted a system of laws for the settlement of suits and controversies between citizens, among whom were the Mississippi Choctaws, the defendants herein. The laws of the State of Oklahoma providing for the institution of suits for the settlement of controversies was the "law of the land," and hence any requirement that the Mississippi Choctaws should become defendants in the Court of Claims in this suit is a taking of their property rights "without due process of law."

Jurisdiction having been refused in the *Green case*, *supra*, of a claim for supplies against individual tribal Indians whose funds were held in trust as tribal funds by the Government, should foreclose the contention in the instant case of jurisdiction over claims against individual Indians who were citizens of the United States and the State of Mississippi, not under the jurisdiction or control of the Government in any respect, the claims growing out of express contracts in writing, and whose funds received long afterwards, from the sale of allotted lands, were held to the credit of such individual Indians.

LIABILITY.

Appellants assert that they are entitled to compensation from all of the Mississippi Choctaws who received allotments under the legislation enacted in Congress by appellants' efforts, whether they were employed by the Indians or not.

They argue that it is analogous to a case where a party claims an interest in property and brings a suit in equity for himself and all others interested in like manner in the subject matter of the suit, the result being to create a trust fund, or to bring the property within the control of the court for administration, so as to render the persons interested liable to pay their pro rata share of the cost and expenses of the suit. (*Trustees v. Greenough*, 105 U. S. 527; *Central R. R. v. Pettus*, 113 U. S. 116; *Harrison v. Perea*, 168 U. S. 311.)

This suit, on the contrary, is an action at law. The liability on a *quantum meruit* rests on an implied promise to pay for services rendered and is technically an action in *assumpsit*. The jurisdictional act by directing the court to render judgment "in such amount or amounts as may appear equitable and justly due" does not change the character of the suit from an action at law to one in equity. The act creates no liability, but merely provides a forum for the adjudication of the claim according to applicable legal principles. (*Sac and Fox Indians*, 220 U. S. 481, 489; *United States v. Mille Lac Chippewas*, 229 U. S. 498, 500.) The alleged services in the instant case were not rendered in a court of law or equity, but were rendered in securing legislation in Congress. No fund was created or property brought within the control of the court by reason of such services. The property from the time the rights of the Mississippi Choctaws accrued under the treaty of September

27, 1830, was under the complete control of the executive department of the Government, and has remained under its control until the allotment or distribution in severalty to said Indians. The contracts stipulate payment by the individual Indians after the receipt of their allotments and funds by them, and the jurisdictional act provides payment of the judgment from the funds due such Indians as individuals by the United States, when it could no longer be considered as a trust fund. Therefore the doctrine of equitable ~~and~~^{and} distribution could have no application to a case of this kind.

To invest the Court of Claims with jurisdiction of the parties and the subject matter of the suit, the employment must have been by all of the Mississippi Choctaws who received allotments in order to entitle the appellants to recover from them as a class. Winton and his associates had contracts with only 696 of the 1,578 Indians who received allotments. Most of the other Indians had contracts with other parties, and 137 of them were not born until after the alleged services were rendered and the legislation enacted. There could under the circumstances have been no presumption of an agreement as a class to pay for such services.

The contracts, however, were not carried out in accordance with their terms. Hence there could have been no liability even if all of them had made contracts with appellants.

The right to share in the Choctaw-Chickasaw lands in the Indian Territory was given to the members of

the tribe who remained in Mississippi by article 14 of the treaty of 1830, and was contingent upon their removal to the Choctaw country. Those Mississippi Choctaws who removed and made application under the act of 1896 within the three months specified were enrolled with respect to the tribal lands upon the same footing as other Choctaws. After the time limit had expired they had the same right as before, but there was no way in which it could be asserted. Sections 41 to 44 of the act of July 1, 1902, simply extended the time for making applications for enrollment, and made the identification of full bloods easier, but placed certain limitations upon settlement in the Choctaw country in order to show that the removals had been made in good faith. The contracts were indivisible and removal was just as necessary to secure allotment as identification, and both were conditions required of the individual Indians.

More than one-third of those identified never furnished any proof of removal and settlement in the Choctaw country, and to this day have never received allotments of Choctaw-Chickasaw lands.

When appellants contracted to remove the Mississippi Choctaws it was as much a part of the contract as the agreement to secure legislation allowing their identification and enrollment. Their reason for the abandonment of the stipulation for removal was lack of funds to carry it out.

This court has repeatedly held that where a party, competent to act, enters into a lawful contract pos-

sible of performance, the party so charging himself must make it good unless the act of God, the law, or the other party renders its performance impossible. Unforeseen difficulties, however great, will not excuse him. (*Dermot v. Jones*, 2 Wall. 7; *The Herriman*, 9 Wall. 161, 172; *Railroad Company v. Smith*, 21 Wall. 255.)

Even if appellants had removed the 696 Indians with whom they had contracts, and who were enrolled and received allotments, it would have been no evidence of their employment by the 1,578 Mississippi Choctaws who were enrolled and received allotments under legislation for the enactment of which appellants claim compensation. The greater part of those with whom they had contracts also had contracts with other parties who were intervenors in this suit, and 137 of them, born after the removal of the Mississippi Choctaws to the Indian Territory, had no contracts at all.

MERITS.

The Court of Claims has found that all of the legislation passed by Congress under which the Mississippi Choctaws received allotments was suggested or prepared by the Hon. John Sharp Williams, in conjunction with Senator Walthall in the Senate and Representative Curtis in the House, until March 4, 1903. The interest of Mr. Williams in these Indians was perfectly natural, as practically all of the full-blood Choctaws in Mississippi lived in his congressional

district. It is true that Mr. Owen early in 1896 first called the attention of Mr. Williams to the rights of these Indians under article 14 of the treaty of September 27, 1830, to participate in the allotment of Choctaw-Chickasaw lands in the Indian Territory, and left a copy of the treaty with him. Thereafter until March 4, 1903, when his county was placed in another district, Mr. Williams was consulted on all pending legislation in Congress concerning the Mississippi Choctaws (Rec. 100, 101).

The Dawes Commission also stated in March 10, 1899, in its opinion on the McKennon roll, that Mr. Williams, in whose district the Choctaw Indians for the most part lived, had, with the aid of Senator Walthall, secured the legislation under which it was then acting, and might be safely trusted to further look after their interests (Rec. 108).

Appellants have admitted those facts in a circular addressed to the Mississippi Choctaws, dated July 1, 1898, where in effect they claim that legislation up to that time had been secured through Mr. Williams, Mr. Allen, and Senator Walthall at their solicitation (Rec. 105); in other words, through services for which there can be no recovery (*Trist v. Child*, 21 Wall. 441).

Appellants made an application to the Dawes Commission for the enrollment of Jack Amos and 97 other Choctaws living in Mississippi under the act of June 10, 1896 (29 Stat. 321). This was rejected on the ground that their removal to the Indian Territory

was necessary to entitle them to such enrollment, and the ruling of the commission was sustained by the courts (Rec. 102). The probable effect of this action was to prevent Mississippi Choctaws from removing to the Indian Territory and securing their enrollment under the act of 1896.

Appellants also filed several memorials asking Congress to enact legislation granting Mississippi Choctaws the right to receive allotments of Choctaw-Chickasaw lands and retain their residence in Mississippi (Rec. 101, 155).

The language used in article 14 of the treaty of 1830 would appear sufficiently clear to convince any reasonable man that such a construction is not sound.

After the appellants became convinced that Congress would not pass such legislation they changed their tactics and memorialized Congress to confirm the inaccurate and discredited McKennon roll (Rec. 108, 109). The act of May 31, 1900, which the appellants advocated for that purpose, was a positive injury to the Mississippi Choctaws (Rec. 109, 110), as it retarded and sidetracked other legislation,

Their proposed amendment to section 41 of the act of July 1, 1902, also had in view the confirmation of the McKennon roll (Rec. 112, 113).

The full-blood rule of evidence contained in section 41 of the act of July 1, 1902, as it was finally passed, was drafted by Assistant Attorney General Van Devanter and Mr. McMurray, attorney for the Choctaw

Nation (Rec. 113, 114), and under this provision practically all of the Mississippi Choctaws who received allotments were identified (Rec. 112).

Sections 41 to 44 of the act of July 1, 1902, were passed over the objection of appellants (Rec. 114) because of the full-blood rule of evidence, as well as other limitations (Rec. 12).

The effect of these efforts of appellants was to retard and make more difficult the passage of legislation, which was really beneficial to the Mississippi Choctaws. Congress considered it necessary to safeguard the interests of the Choctaw Nation, as well as the Mississippi Choctaws, and to prevent identified Mississippi Choctaws from removing to the Choctaw Nation, securing allotments and then returning to Mississippi, and also to prevent the hordes of imposters, some 25,000 in number, from all over the country, securing identification as Mississippi Choctaws. It was to the interest, of course, of the attorneys for appellants to secure the identification of as many persons as possible.

The record shows that Mr. Williams was always ready to safeguard the interests of genuine Mississippi Choctaws wherever possible (Rec. 104), and that he was principally instrumental in securing the enactment of all of the legislation under which they finally received their allotments, while appellants not only hampered legislation, but seriously interfered with the work of the Dawes Commission in making up the rolls (Rec. 107, 108, 111).

For the reasons stated it is respectfully submitted that the judgment of the Court of Claims dismissing the petition should be affirmed.

HUSTON THOMPSON,
Assistant Attorney General.

GEORGE M. ANDERSON,
Attorney.

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JAMES S. HANCOCK

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In the Supreme Court of
the United States

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October Term, 1916.

277.190

JOHN LONDON, WALTER R. FIELD,
MADISON M. LINDLY, AND KATIE
A. HOWE, EXECUTRIX, INTERVEN-
ORS, APPELLANTS.

NOT

VS.

JACK AMOS AND OTHERS KNOWN
AS "THE MISSISSIPPI CHOCTAW,"
APPELLEES.

Mem. 887-888
-889

NOTICE FOR WRIT OF CERTIORARI, WITH
BRIEF, AFFIDAVIT AND NOTICE, AND
ACKNOWLEDGMENT OF SERVICE

OWEN MEAD,
Attorney for Appellants
in Nos. 886, 887 and 888.

In the Supreme Court of the United States

October Term, 1916.

JOHN LONDON, WALTER S. FIELD,
MADISON M. LINDLY, AND KATIE
A. HOWE, EXECUTRIX, INTERVEN-
ORS, APPELLANTS.

VS.

JACK AMOS AND OTHERS KNOWN
AS "THE MISSISSIPPI CHOCTAWS,"
APPELLEES.

} Nos. 926, 927
and 930

MOTION FOR WRIT OF CERTIORARI.

Come now the appellants, John London, Walter S. Field, Madison M. Lindly and Katie A. Howe, Executrix of Chester Howe, deceased, by Guion Miller, their counsel, and suggest the diminution of the record in this cause, in this, to-wit:

1. The said record does not contain the Tentative Findings of Fact and Opinion of the Court handed down by the Court of Claims of the United States, December 7, 1914.

2. The said record does not contain the objections and exceptions of Walter S. Field and Madison M. Lindly to the said Tentative Findings of Fact and Opinion of said Court of Claims, of December 7, 1914, which said objections and exceptions were filed in said Court, January 21, 1915, and are found on page one and following pages to the last paragraph on page twenty-five of the printed copy of said objections and exceptions so filed as aforesaid.

3. The said record does not contain Finding XLII relative to the claims of Walter S. Field and Madison M. Lindly, and Finding XLV, relative to the claim of John London and others, and the Conclusion of Law as handed down by the Court of Claims, May 17, 1915.

4. The said record does not contain the Exceptions filed August 16, 1915, on behalf of Walter S. Field and Madison M. Lindly to the Findings of Fact and Conclusion of Law and Opinion handed down by the Court of Claims of the United States, May 17, 1915, with the correction of clerical error in said Exceptions as set forth November 29, 1915.

5. The said record does not contain the proposed Bill of Exceptions on behalf of the said Walter S. Field and Madison M. Lindly, filed with the Court of Claims of the United States for settlement, on August 16, 1915.

6. The said record does not contain so much of the Motion for a New Trial on behalf of Walter S. Field filed in the Court of Claims of the United States, on November 28, 1916, as is found in the printed copy of said Motion for a New Trial, beginning at subdivision 9 on page 4, and ending at the end of subdivision 5 on page 7 and the argument as to the Errors of Law in support of said Motion for a New Trial as the same is found on pages 26 to 35 inclusive of the printed copy of said Motion filed, November 28, 1916, as aforesaid.

7. The said record does not show the names of the Judges constituting the Court of Claims of the United States, on the dates of the respective hearings before said Court in February, 1915, and February, 1916, and at the time of the consideration by the Court of the Motion for a New Trial, filed on behalf of Walter S. Field, November 26, 1916.

Wherefore, the said appellants move the Court under Rule 14, to award a writ of certiorari to be issued and directed to the Chief Justice and Justices of said Court of Claims of the United States, commanding them that, searching the record and proceedings in said cause, they forthwith certify to this Court those parts of the record so omitted as aforesaid.

Dated this 9th day of March, 1917.

GUION MILLER,

Attorney for Appellants.

BRIEF IN SUPPORT OF MOTION FOR CERTIORARI.

1. We ask that the Tentative Findings of Fact and Opinion handed down by the Court of Claims, December 7, 1914, be made part of the record on this appeal in order that the objections and exceptions referred to in Subdivision 2 of this Motion may be understood. These Tentative Findings are referred to and in substance made a part of said objections and exceptions, and the meaning and scope of said objections and exceptions cannot be fully ascertained without an examination of said Tentative Findings.

2. We ask that the portion of the objections and exceptions referred to in subdivision 2 of this Motion be made part of the record on this appeal in order that it may appear of record that Walter S. Field and Madison M. Lindly, through their attorney of record, in due season specifically called the attention of the Court of Claims to the failure and omission of the Court to make findings of fact in regard to certain specific matters established by the evidence, which these appellants deem relevant and material, and necessary to be found in order to enable them to present on appeal the legal questions, arising under the Acts of Reference in this case.

The said objections further show that the appellants, Field and Lindly, requested the Court of Claims to make findings as to such matters, based upon the evidence in the record. These objections and exceptions are referred to in the subsequent Exceptions and Bill of Exceptions referred to in subdivisions 4 and 5 of this Motion and in part form part of said Exceptions and Bill of Exceptions.

The particular purpose of these appellants is to make part of the record these objections and exceptions and the Exceptions and Bill of Exceptions, referred to in subdivisions 4 and 5 of this motion, so as to lay the foundation

for an application to this Court to remand the case to the Court of Claims with instructions to that Court to make findings of fact based upon the evidence in the record relative to the several matters claimed by these appellants to be material and essential facts for the proper presentation of the legal questions involved under the Acts of Reference on this Appeal. Such an application will not be considered by this Court, as we understand the decisions, without it is made to appear that requests for findings of fact as to the matters in question have been previously made to the Court of Claims in due season.

3. We ask that Finding XLII relative to the claims of Field and Lindly, and Finding XLV relative to the claims of London and others, as handed down by the Court of Claims, May 17, 1915, be made part of the record on this appeal in order that it may appear that no substantial change was made in the Tentative Findings of Fact, handed down by the Court, December 7, 1914, so far as these appellants are concerned, and to further show the state of the record at the time of the filing by these appellants of the Exceptions and Bill of Exceptions referred to in subdivisions 4 and 5 of this motion.

4. We ask that the Exceptions, filed on behalf of the appellants, Field and Lindly, on August 16, 1915, referred to in subdivision 4 of this motion, be made part of the record on this appeal, in order that it may appear of record that these appellants, in due season again called the attention of the Court of Claims to the errors and omissions of the Court in failing to find material facts established by the evidence, and duly excepted to the action of the said Court in thus failing and refusing to make such findings, and further excepted to the rulings of the Court in passing upon the materiality and relevancy of evidence, and in construing the Acts of Reference in this case, and that they duly excepted to the Conclusion of Law announced by the Court.

5 We ask that the Bill of Exceptions on behalf of Field and Lindly presented to the Court on August 16, 1915, referred to in subdivision 5 of this motion, be made a part of the record on this appeal in order that it may appear of record that these appellants in due time, requested the Court of Claims to settle a Bill of Exceptions, and tendered to the Court a draft of such exceptions as desired by these appellants, with a synopsis of the evidence in the record tending to prove the facts deemed necessary and material by these appellants to the proper presentation of their appeal to the Supreme Court of the United States.

4 and 5. We further desire to have the matter referred to above under subdivisions 4 and 5 in the record on this appeal, so that it may clearly appear to this Court just what issues were pending before the Court of Claims, so far as the appellants, Field and Lindly were concerned, at the time of the hearing before the Court of Claims in February, 1916.

With these added to the record and the docket entries of the Court of Claims now forming part of the record we believe it will be made to appear clearly to this Court, that at the time of said hearing in February, 1916, the only questions before the Court of Claims so far as Field and Lindly were concerned, were whether under the practice of the Court of Claims a Bill of Exceptions can be asked for and settled by the Court, and if so, whether the proposed Bill of Exceptions was in proper form; and second, the allowance of the appeal theretofore prayed by the said Field and Lindly.

It will thus appear that there was no motion for a New Trial pending on behalf of Field and Lindly, and that no argument was made on their behalf, and that their attorney of record in the Court of Claims, L. A. Pradt, took no part in the argument, and while Guion Miller who was of counsel for Field and Lindly, did appear as of counsel for another intervenor, Katie A. Howe, Executrix, and argued the

motion for a New Trial filed on behalf of the said Howe, no brief was filed or argument made on behalf of the said Field and Lindly except in respect to the question of the right of the said Field and Lindly to have a Bill of Exceptions settled. Yet notwithstanding these facts the Court refused to settle a Bill of Exceptions, and proceeded to make additional Findings of Fact in respect to the said Field and Lindly, one of the members of the Court participating in the making of said Findings of Fact having become a member of the Court since the former argument of the case, and never having had the benefit of the argument of the case, on behalf of the said Field and Lindly, except as such argument was necessarily involved in the argument made by counsel on behalf of Howe in support of the Howe motion for a New Trial. We wish these facts to sufficiently appear of record so as to be in position to file a motion in this Court on behalf of Field and Lindly, to remand the case to the Court of Claims with instructions to that Court to reconsider the Findings of Fact made in regard to the claim of Field and Lindly, and hear argument in their behalf relative to such Findings, for the reason that the present Findings were irregularly and improperly made.

That a Bill of Exceptions is an appropriate and proper form of procedure in the Court of Claims, is shown by the following citations from Supreme Court decisions:

"Whilst we are of the opinion that the appellants are entitled to have the findings made complete on the points indicated by the interrogatories, either affirmatively or negatively, we do not regard a certiorari as the proper mode to effect the object.

.

"If that court (Court of Claims) should refuse, with proper evidence before it, to find a material fact desired by either of the parties, the proper remedy would be to make a request that such findings be made, and to except in case of refusal."

U. S. vs. (Adams) Child, 9 Wall. 661; Book 19, Co. Op. Ed., p. 809.

"The fifth (rule as to appeals from the Court of Claims) permits either party to call for a finding upon special question deemed material to the judgment in the case, and, if refused, to ask this court to pass upon the materiality of the fact alleged, and should it be considered material, to send down for the findings. Such is the construction given the rules in *Mahan vs. N. Y.*, 14 Wall., 112. The object is to present the question here as upon an exception to the ruling of the court below in respect to the materiality of the fact. For that purpose it must have been submitted to the court in a written request as provided in the rule."

Driscoll Case, 131 U. S., Appx., CLIX, Book 24, Co. Op. Ed., p. 596.

"If the Court of Claims refuses to find as prayed, the prayer and refusal must be made part of the record, so that this court can determine whether the question is one so necessary to the decision of the case that it will send it back for such finding."

Mahan vs. U. S., 14 Wall., 109.

The way to make such a refusal a part of the record, is, as shown in the two cases cited, by taking an exception and this we submit necessitated bill of exception for the purpose of showing the fact and to complete the record.

"On an appeal, the parties were entitled to have all the facts proved in the case before the court below, in the judgment of the court truly found, and stated in the record, that either deemed material to the decision; and as we have seen, the remedy is ample to correct any mistakes committed, if applied for prior to the hearing in this court."

U. S. vs. Adams, 8 Wall., 654.

The same rule applies to Admiralty cases. *In *Duncan vs. the Francis Wright*, 105, U. S., 583, the Supreme Court held:

"If the Circuit Court neglects or refuses on request, to make a finding, one way or the other, on a question of fact material to the determination of the cause, when evidence had been addressed on the subject, an exception to such refusal presented by a bill of exceptions, may be considered here on appeal."

So too, if the court against remonstrance finds a material fact not supported by any evidence.

"In the one case the refusal to find would be equivalent to a ruling that the fact was immaterial, and in the other that there was some evidence to prove what is found when in truth there was none. Both these are questions of law and proper subjects for review in an appellate court."

Whether or not circumstantial facts

"establish the ultimate fact to be reached is, if a question of fact at all, to say the least, in the nature of a question of law. * * *

"The inquiry thus presented is as to the legal effects of facts proved, not of the evidence given to make the proof, and the question of practice to be settled is, whether under our rule the judgment of the Court of Claims, as to the legal effect of what may perhaps, not improperly be called the ultimate circumstantial facts in a case, is final and conclusive, or whether it may be brought here for review on appeal. * * *

"To avoid misapprehension in the future we take this opportunity to say that we do not only think such a judgment may be reviewed here, if the question is properly presented, but when the rights of the parties depend upon circumstantial facts alone, and there is doubt as to the legal effect of the facts it is the duty of the court, when requested, to so frame its findings as to put the doubtful question in the record. After that the question is as to the effect of

of the facts, and when the evidence in a case had performed its part and brought all the facts that have been proved, these facts thus established are to be grouped and their legal effect as a whole determined."

U. S. vs. Puch, 99 U. S., 265.

The intervenors, Field and Lindly, believe that the circumstantial facts requested by them to be found by the Court, are material and necessary for the proper consideration of the legal points which they desire to raise on their appeal. As required by the decisions of the Supreme Court they have made the request for the findings of fact, which the Court of Claims deem immaterial, and the intervenors have duly excepted. The proper and only way by which this situation can be put into the record is by a bill of exceptions.

6. We ask that the portions of the Motion for a New Trial filed on behalf of the appellant, Field, on November 28, 1916, referred to in subdivision 6 of this Motion, be made a part of the record on this appeal, in order that it may appear of record that this appellant continued to call the attention of the Court of Claims to the failure and omission of the Court to include in said findings certain specific facts believed by this appellant to be fully established by the evidence, which he believed to be essential to the proper presentation of his case on appeal, and which, he alleged, it was error on the part of the Court of Claims to omit from the Findings of Fact; and further to show that this appellant assigned as error of law the rulings of the Court in respect to the admissibility of evidence as therein set forth, and in disregarding testimony. And further to show that the attention of the Court of Claims was expressly called to the fact that the Findings of Fact so far as they specially related to the claims of Field and Lindly were improperly and irregularly made, because made by the Court of its own motion when that matter was not pending before the Court,

and when one member of the Court, as then constituted, had not heard any argument on behalf of the said Field and Lindly. And further that an express request, based upon these considerations was made to the Court to allow oral argument in support of this motion for a New Trial, which request was not granted.

It should be noted that at the time of the filing of this motion for a New Trial and action upon it by the Court, still another change had taken place in the personnel of the Court, and a new judge had been appointed who never heard any arguments in the case. It does not appear from the record whether this judge took any part in the consideration of the motion for a New Trial, but we assume he did not, and of course the judge who had retired and who had participated in the hearings did not take part in the consideration of the Motion.

7. We ask that the names of the judges constituting the Court of Claims, at the times of the several hearings before the Court, referred to, be made a part of the record on this appeal, so that the facts referred to above, in the discussion of subdivisions 5 and 6, may clearly appear. We are in doubt as to whether this Court will take judicial notice of the dates of appointment, qualifications, and retirement of justices of the Court of Claims, and out of abundant caution, request that the facts thus requested be officially stated in the Record.

GUION MILLER,

Attorney for Appellants.

AFFIDAVIT IN SUPPORT OF MOTION FOR WRIT OF CERTIORARI.

CITY OF WASHINGTON, }
DISTRICT OF COLUMBIA. } ss.

Guion Miller, being first duly affirmed, deposes and says that he is attorney for the appellants in cases Nos. 926, 927 and 930, October Term of the Supreme Court of the United States, and that he prepared and signed the Motion for a Writ of Certiorari to be issued and directed to the Chief Justice and Justices of the Court of Claims of the United States, above set forth, and that he prepared and signed the Brief in support of said motion, above set forth, and that the facts set forth in said motion and in the Brief in support thereof, are true to the best of his knowledge, information and belief.

This affiant further affirms that before the record in this case was made up, he specifically requested the Clerk of the Court of Claims in making up the record to include therein the following:

1. The Tentative Findings of Facts and opinion handed down by the Court, December 7, 1914.
2. Objections and exceptions of Walter S. Field and Madison M. Lindly to the proposed Findings of Fact, as filed January 21, 1915, beginning at Finding XLII at the bottom of page 4, to the end of page 20.
3. Exceptions filed on behalf of Walter S. Field and Madison M. Lindly, by L. A. Pradt, their attorney of Record, on August 16, 1915, with the correction of clerical error therein as set forth on November 29, 1915.
4. The proposed Bill of Exceptions, on behalf of Walter S. Field and Madison M. Lindly, as presented by L. A. Pradt, their attorney of Record on August 16, 1915.

5. So much of the Motion for a New Trial on behalf of Walter S. Field filed by L. A. Pradt, his attorney of Record, on November 28, 1916, as is found in the printed copy of the same beginning at subdivision 9 on page 4, and ending at the end of subdivision 13 on page 5.

but was informed by the Clerk of said Court that if this was to be done, he should get an order to that effect from the Court of Claims. That thereupon he filed in said Court of Claims the following motion which was not allowed by the Court:

IN THE COURT OF CLAIMS OF THE UNITED STATES.

The Estate of Charles F. Winton, Deceased,
and others

vs.

Jack Anson and others, Known as the
Mississippi Choctaws.

No.
29,821

MOTION.

Come now Walter S. Field and Madison M. Lindly, by L. A. Pradt, their attorney of Record, and request the Court to direct the Clerk of this Court in making up the record on appeal in the above entitled cause, to include therein the following:

1. The Tentative Findings of Fact and opinion handed down by the Court, December 7, 1914.

2. Objections and exceptions of Walter S. Field and Madison M. Lindly, to the proposed Findings of Fact, as filed January 21, 1915, beginning at Finding XLII at the bottom of page 4, to the end of page 20.

3. Exceptions filed on behalf of Walter S. Field and Madison M. Lindly, by L. A. Pradt, their attor-

ney of Record, on August 16, 1915, with the correction of clerical error therein as set forth on Nov. 29, 1915.

4. The proposed Bill of Exceptions, on behalf of Walter S. Field and Madison M. Lindly, as presented by L. A. Pradt, their attorney of Record on August 16, 1915.

5. So much of the Motion for a New Trial on behalf of Walter S. Field, filed by L. A. Pradt, his attorney of Record, on November 28, 1916, as is found in the printed copy of the same beginning at subdivision 9 a. page 4, and ending at the end of subdivision 13, c. page 5.

SUGGESTION.

If this Court should be of opinion that the Objections and Exceptions filed January 21, 1915, above referred to should be set forth in full rather than in part, and that the motion for a new trial filed Nov. 28, 1916, should also be set forth in full rather than in part, we request that this be done.

L. A. PRADT,
Attorney of Record for
Walter S. Field and Madison M. Lindly.

GUION MILLER,
Of Counsel.

This affiant further affirms that he believes the matters and things set forth in the above motion should be made part of the record in this case in order that the cases of the appellants may be fully and fairly presented to the Court.

GUION MILLER.

Subscribed and affirmed to before me, a Notary Public in and for the District of Columbia, this 9th day of March, 1917.

[SEAL]

PAULINE M. WITHERS,
Notary Public, D. C.

Washington, D. C.,

March 19, 1917.

HON. JOHN W. DAVIS,

Solicitor General of the United States.

Sir:

Please take notice that on Monday, April 9, 1917, at the convening the Court, or as soon thereafter as the business of the Court will permit, I shall present the above motion to the Supreme Court of the United States, and ask the Court to consider the same.

Very respectfully,

GUION MILLER,

Attorney for Appellants

in Nos. 926, 927 and 930,

October Term, 1917.

I hereby acknowledge service of a copy of the above motion, brief and affidavit, this 19th day of March, 1917.

JOHN W. DAVIS,

Solicitor General of the United States.

We consent to the allowance of the above motion.

WILLIAM W. SCOTT,

Attorney for Appellants in No. 924.

GUION MILLER,

Attorney for Appellants

in Nos. 925, 928 and 929.

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Supreme Court of the United States.

Nos. 124, 125, 126, 127, 128 AND 129.

OCTOBER TERM, 1918.

J. S. BOUNDS, ATTORNEY IN FACT FOR T. A. BOUNDS,
JOHN LONDON, WALTER S. FIELD, MADISON M. LINDLY,
J. J. BECKHAM, WILLIAM N. VERNON, and KATIE A.
HOWE, EXECUTRIX OF THE ESTATE OF CHESTER
HOWE, DECEASED, *Appellants*,

vs.

JACK AMOS AND OTHERS, KNOWN AS THE MISSISSIPPI
CHOCTAWS.

MOTION FOR AN ORDER REMANDING THE
CASES TO THE COURT OF CLAIMS FOR
ADDITIONAL FINDINGS OF FACT.

*To the Honorable Chief Justice and Associate Justices
of the United States—*

Your petitioners, the appellants, J. S. Bounds, attorney in fact for T. A. Bounds, John London, Walter S. Field, Madison M. Lindly, J. J. Beckham, William N. Vernon, and Katie A. Howe, executrix of the estate of Chester Howe, by

Guion Miller, their attorney, request the Court to enter an order remanding these cases to the Court of Claims with instructions to said Court to make and certify additional findings of fact upon the following points:

1. Who were the associates of Chester Howe within the meaning of the jurisdictional acts in these cases?

2. Whether at any time between the years 1895 and 1907, during the prosecution of the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation, Walter S. Field and Madison M. Lindly were in fact working in conjunction or association with Chester Howe in the prosecution of said claim, under a contract agreement or understanding that the said Field, Lindly and Howe would prosecute said claim together, and share with each other in the division of any fees that might be received by them from Mississippi Choctaws for the services thus rendered.

3. Whether at any time between the years 1895 and 1907, during the prosecution of the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation, Walter S. Field and Madison M. Lindly were recognized as associates of Chester Howe in the prosecution of said claim, by any of the Committees of Congress, by any of the judges of Indian Territory, by the Secretary of the Interior, by the Commissioner of Indian Affairs, or by the Commissioner to the Five Civilized Tribes; or was either the said Field or the said Lindly so recognized as an associate of the said Howe.

4. Whether in 1895 and 1896 the intervenor, M. M. Lindly, an attorney-at-law of South McAlester, Indian Territory, was employed by certain individual Mississippi Choctaws then residing in the State of Mississippi to represent them in asserting their claim to citizenship in the Choctaw Nation.

Whether said Lindly at that time secured from said individual Mississippi Choctaws certain instruments in writing purporting to be contracts of employment to prosecute their said claims.

5. Whether under the employment set forth above in Section 4 the said Lindly appeared before the Dawes Commission and the District Courts of Indian Territory and was recognized by said Commission and by said Courts as attorney for said individual Mississippi Choctaws.

6. Whether in the Fall or Winter of 1895 the said Lindly associated with him the intervenor, W. S. Field, then a practicing attorney of Oklahoma City, Okla., to assist him in the prosecution of the Mississippi Choctaw claims.

7. Whether under said association with Lindly the said Field came to Washington in December, 1896, or January, 1897, to assist in securing legislation for the relief of the Mississippi Choctaws and whether during this visit to Washington said Field associated Chester Howe, then an attorney-at-law of Oklahoma City, Okla., and Washington, D. C., with him in the matter of the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation.

8. Whether, thereafter, in the year 1897, the said Lindly, at the suggestion of the said Field, or otherwise, secured a certain instrument in writing in triplicate purporting to be a contract for the employment of the said Lindly, and purporting to be executed by the representatives of three bands of Mississippi Choctaws, with a view to securing the recognition of the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation, and whether there was attached to said instrument a certificate purporting to be made by the

judge of a court of record in the State of Mississippi, setting forth the time when, and the place where, such instrument was executed, and that it was done in his presence, and setting forth who the interested parties were as stated to him at the time, the names of the parties making the same, the source and extent of the authority claimed at the time by the contracting parties to make the contract or agreement, and whether made in person or by agents or attorney of either party or parties, and whether there was attached to said certificate the seal of the said court of record.

Whether thereafter the said Lindly appeared before the judge of the U. S. Court for the Central District of Indian Territory, and executed and acknowledged said instrument before said judge, setting forth in like manner the time when and place where said instrument was executed, and that it was signed in his presence by the said Lindly and likewise certifying to the other facts enumerated above, and whether there was attached to said certificate the seal of said court, and whether said instrument in writing purported in all other respects to be executed in accordance with the provisions of Section 2103, U. S. Revised Statutes.

9. Whether thereafter, in the year 1898, a contract, or agreement in writing, was entered into between the said Lindly, Field and Howe by which their previous oral agreement to act together in the prosecution of the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation, was reduced to writing, and whether it was provided therein that the said Field and Howe should each receive one-fourth of the fees recovered and the said Lindly should receive the remaining one-half, and whether at the same time it was agreed between the parties that the said Lindly should, out of his one-half interest, pay all expenses growing out of his employment of James E. Arnold, Louis P. Hudson and John London in assisting in the identification and enroll-

ment of individual Mississippi Choctaws and in making the various contracts set forth.

10. Whether thereafter, in the year 1898, the instrument in writing referred to above in Section 8, and the contract or agreement set forth above in Section 9, were taken to the Commissioner of Indian Affairs by the said Howe, and whether the said Commissioner was requested by the said Howe and Field to approve said instruments as required by law.

11. Whether said instrument in writing, referred to above in Section 8, was examined by the officials of the Indian Office charged with the duty of considering such matters, and whether it was found by them to conform in all respects to the requirement of Section 2103, U. S. Revised Statutes, so far as all formalities were concerned, and whether the Commissioner of Indian Affairs held that the claim of the Mississippi Choctaws did not come under the provisions of said section, and whether he refused to approve said instrument for that reason.

12. Whether thereafter said instrument in writing, referred to above in Section 8, together with the contract or agreement, referred to above in Section 9, was returned by the Commissioner of Indian Affairs to the said Howe, and whether the originals of said instrument in writing, and said contract or agreement have been lost.

13. Whether from the year 1897 down to the time of the final allotment of the Mississippi Choctaws, the said Field and Howe, under and by virtue of the agreements and contracts referred to above in Sections 4, 6, 7, 8 and 9, appeared before, and were recognized by, the Commissioner of Indian Affairs as attorneys representing the Mississippi Choctaws in the matter of their claim to citizenship in the Choctaw

Nation, and whether the said Field and Howe in like manner, during said period, appeared before, and were recognized by, the Committees on Indian Affairs of the Senate, and House of Representatives, and by individual senators and representatives as the attorneys representing said Mississippi Choctaws.

14. Whether from the year 1896 down to the final enrollment of the Mississippi Choctaws the said Lindly, Field and Howe appeared before and were recognized by the Dawes Commission and the United States District Courts in Indian Territory as attorneys representing the Mississippi Choctaws.

15. Whether the said Field, Lindly and Howe during the years from 1896 to 1907 rendered valuable services to the Mississippi Choctaws, which materially assisted them in establishing their claim to citizenship in the Choctaw Nation. Whether such services were rendered by them in Mississippi and in Indian Territory before the Dawes Commission and the United States District Court, and in Washington, D. C., before the Commissioner of Indian Affairs, the Secretary of the Interior, the Committees of the Senate and House of Representatives and before individual senators and representatives.

16. Whether the said Lindly, Field and Howe presented before the Dawes Commission individual claims with a view to establishing the rights to citizenship of the Mississippi Choctaws as a class, and whether they prepared records in these cases for presentation to the Secretary of the Interior, and appeared before the Secretary in support of the same.

17. Whether in 1897 before the United States Court at Ardmore, Indian Territory, the said Lindly, Field and Howe

assisted in securing a decision from Judge Townsend recognizing the rights of said Mississippi Choctaws to citizenship in the Choctaw Nation, and whether this decision was useful in subsequent efforts on behalf of said Mississippi Choctaws.

18. Whether in 1897 the said Lindly, Field and Howe presented the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation to the Commissioner of Indian Affairs in Washington, and whether, as a result of their arguments and representations, they succeeded in convincing the Commissioner of Indian Affairs of the justice of the claim of said Indians, and whether they thereby secured the active co-operation and assistance of the said Commissioner in their subsequent effort before the Committees of Congress and before individual senators and representatives; and whether said Commissioner recognized and acknowledged that the services of Chester Howe and Walter S. Field, in the prosecution of said claim, were valuable and that the relief secured was in large measure due to the efforts of said Howe and Field.

19. Whether the said Field and Howe presented, and supported by argument, the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation, personally to Senators Platt, Quay, Teller and Pettigrew, and Representatives Curtis, Little, Stevens and McRae, and whether these Senators and Representatives materially assisted in obtaining the necessary legislation on behalf of the said Mississippi Choctaws.

20. Whether, in 1897, the said Field and Howe, in connection with Robert L. Owen, assisted in preparing the so-called Walthall resolution of February 11th, 1897, and procured its introduction in the Senate, and whether they assisted in securing the amendment to the Indian Appropriation Bill of June 7, 1897, resulting therefrom.

21. Whether it was largely due to the efforts of the said Field and Howe, with the co-operation of the Commissioner of Indian Affairs, and Senators Platt, Quay and Teller, and Representatives Curtis and McRea, that the so-called compromise agreement of July 1, 1902 (32 Stat. 641) was enacted, under which said agreement all the rights of the Mississippi Choctaws to citizenship in the Choctaw Nation have been secured.

22. Whether during the years from 1897 to 1902 the said Field and Howe were actively engaged in looking after the interests of the Mississippi Choctaws in Washington before the Department of the Interior and the Office of Indian Affairs, and before both houses of Congress, and whether they were at all times alert and watchful to prevent the enactment of legislation adverse to the said Mississippi Choctaws.

23. Whether from 1902 to 1907 the said Field, Lindly and Howe were actively engaged in the Indian Territory, and at Washington, D. C., in securing the enrollment of individual Mississippi Choctaws as citizens of the Choctaw Nation.

24. Whether the services rendered by the said Field, Lindly and Howe were rendered by them as attorneys, or gratuitously as volunteers or intruders.

25. Whether W. S. Field, M. M. Lindly and Chester Howe have ever received any compensation for said services rendered the 1578 enrolled Mississippi Choctaws referred to in Finding XXXII (Record, pp. 115 & 116).

26. What amount of money was expended by W. S. Field, M. M. Lindly and Chester Howe in the prosecution of the

claim of the Mississippi Choctaws, and what portion of such amounts so expended has been returned to them.

27. What is the proportionate part of the services rendered by each of the claimants, W. S. Field, M. M. Lindly and Chester Howe, in the matter of the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation, and what is the total value of all of such services.

28. Was John London associated with Howe, Field and Lindly, and what, if any, assistance was rendered by John London to individual Mississippi Choctaws in securing their identification and enrollment as citizens of the Choctaw Nation; how many he so assisted, who they were, and what was the value of the services thus rendered.

29. What was the value of the services rendered by John London to M. M. Lindly in securing contracts of employment by the Mississippi Choctaws in the matter of their claim to citizenship in the Choctaw Nation.

30. What, if any, assistance was rendered by M. M. Lindly to individual Mississippi Choctaws in removing from Mississippi to Indian Territory, in maintaining them there, and in securing their identification and enrollment as citizens of the Choctaw Nation; how many he so assisted, who they were, and how much money he expended in their behalf, and the value of the service thus rendered such individual Indians.

31. What, if any, assistance was rendered by Chester Howe to individual Mississippi Choctaws in removing from Mississippi to Indian Territory, in maintaining them there, and in securing their identification and enrollment as citizens of the Choctaw Nation; how many he so assisted, who they were, and how much money he expended in their behalf,

and the value of the services thus rendered such individual Indians.

32. The names of the Individual Mississippi Choctaws assisted by T. A. Bounds as set forth in Finding XXXVI (R. 121); the amount expended by him for each, and the value of the services rendered by him to each of said Indians so assisted.

33. The names of the individual Mississippi Choctaws shown to have been assisted by J. J. Beckham, as set forth in Finding XI (R. 126), and the amount expended by him in behalf of each, and the value of the services rendered by him to each of said Indians so assisted.

34. The names of the individual Mississippi Choctaws assisted, by William N. Vernon, in removing from Mississippi to Indian Territory, and maintained by him after reaching there, as set forth in Finding XXXVII, together with the amount expended by him for each one, either individually or as a member of a family, so far as is shown by the evidence, as well as the amounts received by him from said Indians, so far as shown. Also in what respect, and to what extent, the evidence fails to establish to the satisfaction of the Court the amount expended by said Vernon in conducting the removal and settlement of said Indians.

35. What would be a fair and reasonable compensation for the services rendered, and money expended, by William N. Vernon on behalf of each of the said individual Mississippi Choctaws so assisted by him.

36. What was the total value of the property rights secured to the Mississippi Choctaws as the result of the prosecution of their claim to citizenship in the Choctaw Nation.

Your petitioners respectfully represent to the Court that there was introduced in evidence on their behalf before the Court of Claims testimony upon which Findings of Fact covering all of the points above indicated could have been based, and upon which Findings of Fact favorable to your petitioners on each of said points could have been properly based.

Your petitioners further represent, that they duly requested the Court of Claims to make special Findings of Fact covering the points above indicated favorable to these petitioners, but the Court of Claims failed to make such Findings so requested and failed to make any Findings in lieu of the Findings so requested upon said points.

Your petitioners further aver that Findings of Fact upon the said points above indicated are essential and necessary to a full and adequate presentation to this Court of the questions of law involved in these appeals.

Your petitioners further aver that your petitioners, John London, Walter S. Field and Madison M. Lindly, in due time filed exceptions to the Findings of Fact as made by the Court of Claims and to the failure of the Court of Claims to make additional Findings of Fact, covering the points above indicated relating to their respective claims (Rec. p. 94), and bills of exceptions on behalf of the said London, Field and Lindly were duly prepared and presented to the Court, but the Court of Claims failed to settle said bills of exception although specifically requested so to do. (R. 201.)

Your petitioners further aver that they are informed and believe and so believing charge that the reason the Court of Claims failed to settle bills of exception as requested by the said London, Field and Lindly was that the said Court was of the opinion that the Rules of this Court regulating appeals

from the Court of Claims to this Court did not provide for, nor admit of the practice of the settlement of bills of exceptions, and appeals or writs of error to this Court upon such bills of exception.

Your petitioners further aver that your petitioners Field and Lindly, through their attorney, in due time requested the Clerk of the Court of Claims, in making up the Record on these appeals, to include therein the said exceptions and proposed bills of exceptions on behalf of the said Field and Lindly, but the said Clerk failed to include the same therein as requested.

Your petitioners further aver that on or about the 9th day of April, 1917, a motion for a writ of *certiorari* was duly presented to this Court on behalf of your petitioners Field and Lindly requesting this Court to award a writ commanding the Chief Justice and Justices of the Court of Claims to certify to this Court among other things the said exceptions and proposed bill of exceptions on behalf of the said Field and Lindly, but this motion was denied by this Court.

Your petitioners further aver that, as will appear on page 233 of the Record, it was the wish and instruction of these petitioners that the petitions and amended petitions filed by each of them should be printed as part of the Record, but through inadvertence the Second Amended Petition of Kate A. Howe, executrix of Chester Howe, was not so printed although duly transmitted to this Court as a part of the Record herein, and in order that the said Second Amended Petition may be conveniently considered by the Court they have had the same printed and attached to this petition as Appendix "A" hereto.

Your petitioners further aver that in case the Court should desire to satisfy itself as to whether there is reasonable

grounds for the assertion of your petitioners that there was before the Court of Claims competent evidence to establish the facts asked for in certain of the Findings of Fact requested by certain of your petitioners, they are filing herewith as Appendix "B" hereto, a true copy of the testimony of William A. Jones, late Commissioner of Indian Affairs, and of George A. Ward, late Law Clerk of the Land Division of the Indian Office, as introduced and filed as part of the Record in the Court of Claims.

Respectfully submitted,

GUION MILLER,

*Attorney for J. S. Bounds, Attorney
in Fact for T. A. Bounds, John
London, Walter S. Field, Mad-
ison M. Lindly, J. J. Beckham,
William N. Vernon, and Katie
A. Howe, Executrix of the Es-
tate of Chester Howe, Deceased.*

*State of Maryland,
City of Baltimore, ss—*

I, Guion Miller, being first duly sworn, depose and say that I am the attorney for the appellants, J. S. Bounds, attorney in fact for T. A. Bounds, John London, Walter S. Field, Madison M. Lindly, J. J. Beckham, William N. Vernon, and Katie A. Howe, executrix of the estate of Chester Howe, and I have read the above motion by me subscribed as attorney for said appellants, and that the facts therein stated are true to the best of my knowledge, information and belief.

Subscribed and sworn to before me, a notary public in and for the State of Maryland, City of Baltimore, this..... day of November, 1918.

Witness my hand and notarial seal.

Notary Public.

STATEMENT OF THE CASE.

The petitions in these cases were filed in the Court of Claims under the provisions of the following Acts of Congress:

ACT OF APRIL 26, 1906 (34 Stat. 140).

"That the Court of Claims is hereby authorized and directed to hear, consider and adjudicate the claims against the Mississippi Choctaws of the estate of Charles F. Winton, deceased, his associates and assigns, for services rendered and expenses incurred in the matter of the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation, and to render judgment thereon on the principle of quantum meruit in such amount or amounts as may appear equitable or justly due therefor, which judgment, if any, shall be paid from funds now or hereafter due such Choctaws by the United States. Notice of such suit shall be served on the governor of the Choctaw Nation, and the Attorney General shall appear and defend the said suit on behalf of said Choctaws."

ACT OF MAY 20, 1908 (35 Stat. 457).

"That the Court of Claims is hereby authorized and directed to hear, consider and adjudicate the claim against the Mississippi Choctaws of William N. Vernon, J. S. Bounds and Chester Howe, their associates or assigns, for services rendered and expenses incurred in the matter of the claims of the Mississippi Choctaws to citizenship in the Choctaw Nation, and to render judgment thereon on the principle of quantum meruit in such amount or amounts as may appear equitably and justly due therefor, which judgment, if any, shall be paid from funds now or hereafter due such Choctaws as individuals by the United States. The said William N. Vernon, J. S. Bounds and Chester Howe are hereby authorized to intervene in the suit instituted in said Court under the provisions of section nine of the Act

of April twenty-sixth, nineteen hundred and six, in behalf of the estate of Charles W. Winton, deceased: Provided, that the evidence of the interveners shall be immediately submitted. And provided further, that the lands allotted to the said Mississippi Choctaws are hereby declared subject to a lien to the extent of the claim of the said Winton and of the other plaintiffs, authorized by Congress to sue the said defendants, subject to the final judgment of the Court of Claims in the said case. Notice of such suit or intervention shall be served on the Governor of the Choctaw Nation, and the Attorney General shall appear and defend the said suit on behalf of the said Choctaws."

The claims of the appellants arose in this way: Prior to 1896 there were certain Choctaw Indians residing in the State of Mississippi who claimed to be entitled to participate in the partition of the lands of the Choctaw Nation in Indian Territory under rights reserved to them by Article 14 of the treaty of Dancing Rabbit Creek of September 27, 1830 (7 Stat. 333). These Indians became known as the Mississippi Choctaws, and at that time were very poor and ignorant and in a deplorable condition generally. (Finding XI, Record, p. 100.)

These Indians were not then recognized as members of the Choctaw Nation, either by the Nation, or by the Department of the Interior, and their rights were placed in jeopardy by the passage of the Act of March 3, 1893 (27 Stat. 645), providing for the creation of the Commission to the Five Civilized Tribes, familiarly known as the Dawes Commission, when followed by the Act of June 10, 1896 (29 Stat. 321), which directed the Dawes Commission to make a final roll of the Five Civilized Tribes, which included the Choctaw Nation, for the purposes of the allotment of the Choctaw lands among the members of the Nation in severalty.

It was to secure payment for the services rendered in preserving the rights of these Mississippi Choctaws, and in secur-

ing legislation by Congress enabling them to participate in the distribution of the tribal lands, that the acts of reference, above cited, were secured and the petitions of these appellants were filed in the Court of Claims.

The legislation that thus finally secured the rights of the Mississippi Choctaws is found in the Act of July 1, 1902 (32 Stat. 641). (Finding XXIX, Record, p. 144.) Under the provisions of this act, in order to secure their rights to allotment it was made necessary for the Indians to remove, to the Choctaw-Chickasaw country, within six months after their identification by the Commission, and make proof of settlement within one year; and they were required to reside upon the lands of the Choctaw and Chickasaw tribes for a period of one year after enrollment before they were entitled to receive patents for their allotments. Some of the petitions of these appellants make claim in whole, or in part, for services rendered and money advanced in assisting some of these Indians in being identified as Choctaws, and in removing them to the Choctaw-Chickasaw country, and in maintaining them there during the time required to perfect their title.

There were in all 1,578 Mississippi Choctaws enrolled and allotted under the provisions of the Act of July 1, 1902. The total value of the property rights secured by them is not directly found by the Court, but in the opinion (Record, p. 164) it is shown that the total value has been estimated at from \$14,000,000 to \$16,000,000.

ARGUMENT.

These appellants contend that the Court of Claims has not found all of the facts necessary for the presentation of the questions of law that they wish to raise on this appeal, and which they believe they are entitled to raise under the acts of reference.

The failure of the Court of Claims to make such additional findings, in the opinion of these appellants, was due, in great measure, to a misconception by that Court of the meaning and scope of the acts of reference, and a misconception of the opinion of this Court in the case of *Trist vs. Child*, 21 Wall. 450.

The appellants believe that as a result of this misconception and misconstruction the Court below regarded certain facts as immaterial which were really vital and material, and certain evidence immaterial that was, in fact, material and essential.

The material facts which the appellants claim were omitted by the Court may be gathered under the following general heads:

- (1) There is no finding as to whether the appellants, Field, Lindly and London were associates of Howe within the meaning of the acts of reference.
- (2) There is no finding as to whether Field, Howe, Lindly and London were recognized by Committees of Congress, the Commissioner of Indian Affairs, the Dawes Commission, and the District Courts in Indian Territory, as attorneys representing these Indians.
- (3) There is no finding as to whether certain of the appellants rendered any services, and the findings as to others are insufficient on this point.
- (4) There is no finding as to the value of such services.

The appellants believe that, in order to determine whether Field, Lindly and London were associates of Howe, within the meaning of the acts of reference, the facts should be

fully set forth showing their relations to Howe, and what they actually did in attempting to secure relief for the Mississippi Choctaws. They also believe, in order to show that they are entitled to receive compensation from the Indians for such services as they did render, that the facts should be stated, if they are facts, that the Commissioner of Indian Affairs, and the Committees of Congress, and the Courts in Indian Territory recognized Howe, Field, Lindly and London as attorneys for these Indians and dealt with them as such. With these facts established, the appellants would be in position to argue in this Court that Congress, in its plenary power over the affairs of the Indians, had the right to, and did, by the acts of reference, give authority to the Court of Claims to charge the Indians with the fair and reasonable value of the services thus rendered, entirely irrespective of actual, valid, direct, contractual relation between the Indians and the several appellants. They further believe that if services were rendered by any of these appellants under employment by individual Indians, which enured to the benefit of all these Indians as a class, that Congress had the right to, and did, give authority to the Court of Claims to charge all, with the services thus rendered that benefited all.

The appellants submit that the Court omitted to make the findings of fact now requested for the reason that the Court was in error in its decision as to the law of the case in the following particulars:

1. The Court decided that, in order for any claimant to recover in this case, it was necessary for him to prove that he had some direct contractual relations with the Mississippi Choctaws. Judge Booth, in his opinion on page 169 of the Record, says:

"The claim in suit, as we view it, is an assertion of liability emanating from the performance of service

under an express contract, a service performed, a contract executed, an agreement where the plaintiffs have done all they agreed to do under the express agreements and nothing remains except to pay them therefor. The agreements themselves being invalidated, the service having been performed with the knowledge and consent of the defendants and from which they derived and have accepted, benefits, the law implies an obligation to pay what such services are reasonably worth. It has been uniformly held in the cases heretofore cited that jurisdictional acts, similar in most respects to the ones here under consideration, create no liability under the express agreements, the Court discarding them in so far as they stipulate for the payment of compensation, leaving for our consideration the determination of the question whether the transaction in all its aspects, taking into consideration the situation of the parties, is one which from the proof satisfies the Court that the claimants performed the services claimed for, resulting in benefit to the defendants under such circumstances that the law will imply a correlative obligation to compensate them therefor. The contracts are admissible in evidence both to establish knowledge upon the part of the defendants and as evidence of what might constitute a reasonable award for the work done. This is what the Court understands Congress to mean when it directs a judgment upon the principle of quantum meruit." (9 Cyc. 686.)

Again on pages 177-178:

"The claim of Chester Howe, deceased, is, on its face, devoid of merit. It is a claim against Hudson & Arnold and James E. Arnold. Howe traces absolutely no employment by or knowledge to the Indians that he was acting in their behalf. There is nothing in the record to even suggest such a relationship between Howe and the defendants that would warrant the Court in implying a contract upon their part to recompense him."

"Howe, in so far as this record is concerned, never saw a Mississippi Choctaw Indian. He advocated their

cause, it is true, and he did it with great faithfulness, and signal ability, but he was acting in behalf of his clients, Hudson & Arnold. It would be an act of great injustice to charge the defendants with the payment of an attorney's fee for services rendered by an attorney without their knowledge or consent, and who at the time of acting was under contract with other clients who promised to pay him. The Court cannot consider the failure of Howe's clients to pay him as an evidence that Congress intended to have the Indians answer out of their estate for this default. Howe's petition will be dismissed." (Record, p. 178.)

* * * * *

"Ralston & Siddons were employed by Howe and Howe agreed to pay them. They had no direct relationship with the Indians and their appearance was without the Indians' knowledge or consent. This petition will also be dismissed." (Record, p. 178.)

* * * * *

"From a legal aspect the claim must fail. Field, Lindly and London cannot by a copartnership agreement bind the defendant Indians to pay them for professional services which they never engaged them to perform. It is a startling proposition to contend that because Lindly, Arnold, or Hudson had a contract or contracts with the Mississippi Choctaw Indians, and in the performance of the same employed Field to assist them, that thereby the defendants incurred a liability to pay attorney fees to not only their contract attorneys but to all with whom they might thereafter associate. Lindly, London and Field never prepared, signed or presented a brief to the committees of Congress over their own names. Aside from Field's activity in interviewing personally some individual Congressmen and United States Senators, for which service he could not recover, not one of them had the slightest direct connection with the defendants, except as to some individual contracts taken by Lindly and London. The Congress did not intend by the use of the term 'associates' to extend a right to prefer a claim against the defendant Indians because perchance the personal relationship between Lindly, London, Field and Chester A. Howe was congenial and

agreeable. These three claimants cannot by an agreement between themselves enhance the cost to the defendant Indians for professional services for the performance of which the Indians engaged one of their number to perform. Even if the band and copartnership contracts were fully proved and established, except as to the individual beneficiary thereunder, no possible right of action could accrue. The Indians did not employ the intervenors; they did not even suggest their employment or know of it. The activity by them manifestly was in pursuance of an understanding among the intervenors to which the Indians did not accede and with which they had no concern. It was an express agreement *inter alia*, by the terms of which Lindly agreed with the remaining intervenors to share with them a proportionate part of fees due him under his contracts with the Indians. The Congress was not making contracts for the intervenors or erecting a relationship out of which every Indian attorney who voluntarily connected himself with another actively and properly engaged in urging the defendants' claims before the various departments of the Government, could come in and claim a personal liability to him. The defendants were not exposed to such unlimited liability. The term 'associates' must be read in connection with principles upon which we are to award judgment—'principles of quantum meruit.' An associate to recover cannot rest his case upon a mere contract of association with an attorney regularly employed by the defendants. He must do more; he must assume the burden of establishing a service under such circumstances and so connected with the defendants that the Court can imply a contract upon the defendants' part to pay what those services are reasonably worth. We have heretofore discussed the question under individual contracts and sums expended for removal which we need not again repeat. Suffice it to say that not a single one of the intervenors have established the slightest vestige of authority to represent the defendant Indians, Field himself never having procured a contract in his own name of any kind or character; and the mere fact, if it was established, that he may have been engaged by Chester A. Howe to assist him

professionally in his presentation of the case, could under no circumstance give him more than a claim against Howe for the payment thereof." (Record, pp. 181-182.)

Chief Justice Campbell takes the same view. On page 197 of the Record he says:

"Unless the relation of attorney and client, or some contractual relation existed between the defendant Indians and Winton at or before their enrollment, it cannot be said to exist at all so far as this proceeding is concerned, and no such relation is shown."

These quotations from the opinion make it perfectly evident that the Court of Claims did not believe that it was the intention of Congress by the Acts of Reference to direct the Court to ascertain who had rendered services and determine the value of such services, and charge the Indians for such services, irrespective of whether any direct contractual relationship could be shown. Being of this decided opinion it is not surprising that the Court failed to make findings which would be very necessary and essential if the view should prevail that Congress did intend that those actually rendering services should be paid for the same, irrespective of contractual relations.

The appellants submit that in considering these Acts of Congress, the peculiar situation of these Indians and the relations of the Government to them must be taken fully into consideration. Further, they believe that the fact, which was well known to Congress, and is made plain by the Record, that these Indians had no means of compensating their attorneys except through funds and property that might be coming to them through establishing their tribal rights, must be given consideration in determining the purposes of Congress in offering this relief to these claimants. It must have been that Congress had in mind the provisions of the Indian

Appropriation Act of May 31, 1900 (Finding 23, Record, page 109), as follows:

“Provided further, that all contracts or agreements looking to the sale or encumbrance in any way of the lands to be allotted to said Mississippi Choctaws shall be null and void.”

The appellants submit that the proper interpretation of these Acts of Reference is, that Congress, recognizing great benefits had been conferred upon the Mississippi Choctaws, their wards, by reason of the activities of certain attorneys, that these attorneys were without a remedy to recover their claims against these Indians for compensation for the services thus rendered, either because of lack of formal contractual relations, or because by the Act of Congress of May 31, 1900, such contracts as they had held had been declared null and void, or because of the fact that the funds and property of the Indians were of such character that they could not be proceeded against without special authority from Congress, intended, and expressed an intention, to give to the Court of Claims jurisdiction to afford complete relief to the attorneys, and to do full justice to them. The Court of Claims has apparently given a strict interpretation to these Acts. They have not distinguished between the Government dealing with its wards, and acting, as *quasi* guardian, under obligation to see that those dealing with the Indians should be afforded protection, and the Government acting on its own account with persons *sui juris*. They have completely overlooked, apparently, the condition and situation of these poor Indians, downtrodden, widely scattered, and without, at that time, even the care and supervision of the Indian Office. (Finding XI, Record, p. 100.) It was perfectly obvious to Congress that in the very nature of things, such a band of Indians could not act as a unit, and, indeed, that many of them would not, of their own initiative, have either

the knowledge or the enterprise to secure attorneys to properly represent them.

2. Not only does the Court of Claims maintain that contractual relations must be shown, but it goes much further, and holds that this relation must be shown to have been with the whole band of Mississippi Choctaws; that such relation with individuals, or with bands less than the whole, would not be sufficient to enable the claimants to recover under this Act of Reference.

Judge Booth in his opinion says clearly that this is the view of the Court (Record, pages 175-176-177):

"Aside from the merits of the claim it would be impossible to award a judgment in favor of Winton and his associates and conform to the opinion of the Court. Winton and his associates were, during the whole course of this controversy, discharging their obligations to the Indians under their individual contracts; they were representing Choctaw Indians, with whom they had individual contracts and endeavoring by their efforts to secure for them the greatest possible rights, both individual and property, in the Choctaw Nation as Congress might grant. Winton and his associates were advocating with ability and great earnestness a right accruing to the Mississippi Choctaws under the treaty of 1830 to remain in Mississippi and at the same time enjoy the benefits of the Choctaw citizenship in the Nation. This was a contention designedly assumed for the express benefit of their individual clients and for which they expected them and them alone to pay compensation. It was a service performed for and in the interest of a certain number of Mississippi Choctaw Indians without the knowledge or acquiescence of a large portion of the class with whom they had no contracts, and for whom other claimants were performing service of a very distinct and different character.

"The jurisdictional act does not dispense with the necessity of proving a service of such a general character as to redound to the benefit of all the Indians alike; nor does it relieve the claimants or the Court from all the burden of detail investigation into the origin,

progress, and result of the service for which compensation is claimed. It would be extending the doctrine of an implied contract to pay for services rendered, which may produce beneficial results, to the limit to hold that services performed in the interest of a part of the Mississippi Choctaws imposes the burden upon a large portion of the tribe, totally disconnected in every way from any association with the claimants, of contributing toward payment therefor. Can it be said that because a certain class availed themselves of legislation advocated by claimants they thereby impliedly promised to pay them for services which the record discloses that these very beneficiaries were under contract to pay other claimants for doing the same thing? Supposing some of the Indians, as doubtless some did, had paid their attorneys, must they again respond for a service of which they knew nothing and which they never requested? It is impossible from the testimony to bring home to the large class sought to be charged with expense a common knowledge of what the claimants were doing, or to place them in a situation from which such knowledge may be inferred. The claimants attempt this by the simple introduction of their contracts of employment, supplemented by proof of what they did, apparently resting their case upon the theory that service to a portion of the class was made by the jurisdictional acts equivalent to service for all. To sustain a recovery upon the principle of *quantum meruit* there must be more in the record than a mere acceptance of benefits made available through the efforts of claimants to serve a particular class of the whole class in virtue of written contracts so to do. In a claim like this the principles of *quantum meruit* apply to the persons obligated to pay therefor by the written contracts which have been invalidated by law, but it cannot extend to a large number of persons who were wholly innocent of any work or labor being done for them with the expectation of compensating others than those whom they employed therefor.

"A judgment upon the principles of *quantum meruit* presupposes a situation of the parties whereby the Court may infer from the circumstances of the case that the defendants knew of the efforts in their behalf, acqui-

esced in the performance of labor for their benefit, accepted the benefits of such services, and thereby impliedly promised to pay therefor. In this case not only these claimants but all others have failed to do so. They have shown an individual employment, in some instances extensive, in others limited, each acting within his own sphere absolutely without concerted effort or personal affiliation and association. No one was attempting to serve all the Mississippi Choctaws; no one was attempting to do more than secure the enrollment of their individual clients regardless of the rights of others, and frequently at cross-purposes with each other."

And Chief Justice Campbell in concurring confirms this opinion:

"The jurisdictional acts refer to 'claims against the Mississippi Choctaws.' Not only the language of the acts but the considerations above adverted to as to service upon the defendants rebut a conclusion that suits are authorized against each Mississippi Choctaw who may have made a contract with or for whom or in whose individual interest services were rendered or expenses incurred by a claimant. The acts do not contemplate that the parties named therein, 'there associates or assigns' may propound in said proceeding claims alleged to be against one or a few Mississippi Choctaws who are sought to be charged with liability to such claimant and thereby convert the proceeding into a number of distinct and separable controversies between the several claimants and different Indians as defendants. * * * A claimant is not authorized to select particular Indians supposed to be liable to him and sue them in this proceeding. The claim must be 'against the Mississippi Choctaws' and that means against all of them who were enrolled. This view requires the dismissal of the petitions filed herein of nearly all of the claimants, and intervening petitioners." (Record, p. 188.)

"All of the contracts were with individual Indians and upon what theory it can be asserted that because a large number of said Indians made contracts with Winton or Daley other Indians not so contracting became affected or bound by them it is difficult to perceive. They did not constitute a tribe or band, and had no

tribal organization or government. The State laws had looked to the abolishment of any tribal or Indian government among them. They were citizens, and by contracting with them Winton admitted their power to contract. As late as February, 1906, as appears from the contract between Mr. Owen and Mr. Boyd, one of the associates named in Winton's petition, there is a reference to said contracts as being with 'various individual Mississippi Choctaws.' If the Mississippi Choctaws were 'in a state of helplessness, both financially and socially,' the fact but reinforces the conclusion that those who did not undertake or contract with Winton and his associates should not be held to be bound by the act of those who did contract." (Record, pp. 191-192.)

"The memorials of the 'Mississippi Choctaws' and Winton's said letter together do not create the relation of attorney and client between Winton and the Indians who did not employ him. Winton was retained by a number of Mississippi Choctaws under contracts which he was diligent to procure. That he represented his clients may be conceded. He was 'counsel' or 'attorney' for his clients and he had the right, as they had, to use the general designation of the Mississippi Choctaws in presenting the clients' case. But in so doing he did not become counsel for all of the Mississippi Choctaws. Those not contracting with him could be silent and not be bound to pay for his services or they could contract as many did, with other attorneys. If an attorney employed by one concern to present before a committee of Congress an argument in favor of a higher tariff on certain manufactured articles should see fit to urge that 'the manufacturers of the country' were in need of such legislation, would anybody than his client be bound to compensate him? If he notified them by circular or through the press that he intended to speak or act in behalf of all of them would 'the infant industries' be saddled with his fee upon the principle of *quantum meruit*? *I think not.*" (Record, p. 193.)

"Any rights of Winton must therefore rest upon contract, express or implied, with the Mississippi Choctaws made defendants to this proceeding in his petition. No express contract is shown or claimed. None can be im-

plied from the circumstances above referred to or relied upon by Winton. The employment by some Mississippi Choctaws was not an employment by all of the Mississippi Choctaws." (Record, p. 195.)

Judge Booth in the opinion of the Court of Jan. 29, 1917, on page 212 of the Record, summarizes the matter thus:

"This expression 'The Mississippi Choctaws' standing alone is decidedly misleading. The issue, the real contest in this case, is the question as to whether or not the claimants represented or had authority to represent all the Mississippi Choctaw Indians."

If this opinion of the Court is correct and should be carried to its ultimate conclusion, it would follow that if some one of the claimant attorneys had been able to show that he had actual contractual relations with 1,577 Mississippi Choctaws out of the total enrollment of 1,578 he could not recover in this case. At the time these services were rendered no one knew or could by any possible means have known who, ultimately, would be determined to be entitled to be enrolled as Mississippi Choctaws, as has been shown by the Court in its opinion, Record, page 164:

"The astounding number of 25,000 persons applied for enrollment as Mississippi Choctaws. The Commission rejected all applications except 2,534 and 956 of these failed of allotment because they furnished no proof of removal or settlement in the Indian country; 1,578 persons were finally enrolled and received allotments as members of the Choctaw Nation, having furnished proof of removal to the territory and otherwise complied with the requirements of the law."

If the Court is correct it would have been necessary for each of the appellants to have determined in advance which of the 25,000 Indian claimants were entitled,* and to have secured in some form contractual relations with each one of such Indians before he could bring himself within the bene-

ficial terms with these Acts of Reference. The mere statement of this proposition demonstrates its inaccuracy.

The fact must not be lost sight of that at the time the Act of Reference of May 29, 1908 (35th Stat. 457, Finding 2, R. P. 96), was passed, the enrollment of the Mississippi Choctaws had been accomplished. Congress was then well advised as to their condition in Mississippi prior to their enrollment, and that this condition was such as to bring them especially within the well-settled law that where the parties interested are numerous and the object common to all, a few individuals may authorize proceedings for the benefit of all.

United States vs. Old Settlers, 148 U. S. 427-480;

Smith vs. Swormstedt, 16 How. 288-302;

Eastern Cherokees vs. U. S. & Cherokee Nation, 117 U. S. 288-311.

In passing these acts of reference it must be presumed that Congress took into consideration the peculiar situation of the defendant Indians at the time the attorneys began their labors. The difficulties attending the taking of contracts with these Indians must have been known. The uncertainty of any given individual being finally enrolled, and the certainty that effective work done for one must necessarily result in benefit to the whole class, were self-evident facts which undoubtedly influenced Congress in making provision for compensation in proportion to the value of the services of those who, in fact, rendered this effective work. These acts of reference are distinctly and peculiarly remedial legislation, and must be given a liberal construction, that is, a construction that will adequately carry into effect the real purpose of Congress. That purpose manifestly was to direct the Court of Claims to determine who were associated with Winton and Howe, and the others named in the work, and to award

to each a fair compensation for the services actually rendered. Congress must be assumed to have known that there was otherwise no possible way for those who had rendered service to enforce compensation. Congress knew that it had itself made void certain specific contracts. It knew that the Commissioner of Indian Affairs had refused to approve contracts with these Indians under Section 2163, R. S., and therefore there were no contracts outstanding that could be enforced against the property of these Indians held in trust or under restriction by the United States. Congress also knew that these Indians had not sufficient unrestricted property to compensate the attorneys for the benefits conferred upon them. Congress further knew that every principle of right and justice demanded that adequate relief should be extended to the attorneys who had faithfully and in good faith, by their long continued efforts, won for these heretofore ignorant, distressed and impoverished people a splendid inheritance and a position in society, where they and their children could enjoy the untold blessings of education and opportunity.

But further than this the Act of May 23, 1908, (R. p. 96) clearly shows that the contention that the appellants must show contractual relation with the whole body of Mississippi Choctaws is untenable. The Act expressly authorizes William N. Vernon and James S. Bounds to bring suit for the services rendered by them. These services were exclusively for the benefit of individual Indians. It can not be assumed that Congress did not know the character of these claims of Vernon and Bounds.

Their names were expressly inserted in the Act, and this would not have been done without a showing had been made as to the nature and character of their claims. If there is any doubt about this the proceedings before the Committee and the debates in Congress show that, in fact, the character of these claims were well known.

This brings us to a consideration of the decision of the Court that services rendered individuals in removing to the territory and maintenance while there, could not be made the basis for recovery under this act of reference. Judge Heath in his opinion says:

"Congress does not by the legislation create the situation necessary to be supplied by proof before the Court can act. It affords to the claimants a forum where the burden rests upon them to bring in a record of sufficient strength to sustain a recovery upon the legal principles provided by Congress as the court's guide.

"The judgment, if any, to be awarded is not an individual one. Proof of service to an Indian is not sufficient to recover. Congress was not assuming jurisdiction over individual Mississippi Choctaw Indians as Indian citizens, for if such had been the intent his individual right to be heard in defense would not have been, if it could be, denied him. The jurisdictional acts comprehend service to the Mississippi Choctaw Indians as a class, and under their terms the proof must establish a service that extended alike to all the Mississippi Choctaws enrolled as such on the rolls of the old nation. In the language of the jurisdictional acts, it must appear that the service was rendered in connection with and for the avowed purpose of legalizing 'the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation.' Incidental work and labor performed for the benefit of individual Indians, no matter how extensive, was not within the contemplation of Congress when a charge was laid against the Indian defendants' lands and funds, unless it can trace unmistakable benefits accruing alike to each and all of the 1,643 Mississippi Choctaw Indians finally enrolled in the nation and allotted lands under the law." (Record, p. 170.)

"By no possible means can it be said that money expended for the removal of from 20 to 60 individual Indians to the Territory redounded to the general benefit of Mississippi Indians as a class. While it is true they must remove to acquire the right, yet to bring a

claim against the class it must affirmatively appear that the service rendered and funds expended benefited all the class alike. The claim for removal is an individual one; it can not be otherwise." (Record, p. 171.)

"All these sums of alleged expenditure occurred subsequent to the acquirement of the right of citizenship and are incidental only to that right. It was personal service rendered to the individual Indian, moneys advanced and expended for his personal benefit, and not a claim recognized by Congress as one chargeable against the Indian lands. In addition to what has been said, it would be an absolute impossibility to reconcile the mass of confusing and contradictory testimony respecting this very subject and decide from the records what would be a reasonable charge for this service. It is beyond question that many individuals repaid some claimants for the moneys advanced for this purpose. Possibly many more, if permitted to do so, could prove a similar payment. It is inconceivable that Congress intended to reimburse claimants for the funds thus alleged to have been expended and provide no means of defense for the individual Indian charged. On the contrary, the very absence of any provision for individual defense and representation upon the part of the individual Indian manifests an indisputable intention to limit the jurisdiction of the court to an ascertainment of services rendered and expenses incurred which accrued alike to the Indians as a distinct entity and capable of being equitably apportioned among them." (Record, p. 171.)

"The claim of James S. Bounds is for services distinctly personal. Nothing that he did resulted in any permanent or temporary benefit to the Mississippi Choctaws as a class. His petition will be dismissed.

"The petitions of William N. Vernon, Joseph W. Gillett, Choctaw-Chickasaw Lands & Development Co., J. J. Beckham and David M. McCalib are all for personal services rendered for and on behalf of individual Choctaw Indians, and all were rendered after the passage of the Act of July, 1902. They had no part in the solution of the Mississippi Choctaws' claims to citi-

zenship in the Choctaw Nation. The whole transaction of each petitioner and intervenor mentioned above was entirely speculative and personal. All the above petitions are dismissed." (Record, p. 182.)

So, too, Judge Campbell expresses the same view:

"The jurisdictional acts refer to 'claims against the Mississippi Choctaws.' Not only the language of the acts, but the considerations above adverted to as to service upon the defendants rebut a conclusion that suits are authorized against each Mississippi Choctaw who may have made a contract with or for whom or in whose individual interest services were rendered or expenses incurred by a claimant. The acts do not contemplate that the parties named therein, 'their associates or assigns,' may propound in said proceeding claims alleged to be against one or a few Mississippi Choctaws who are sought to be charged with liability to such claimant and thereby convert the proceeding into a number of distinct and separable controversies between the several claimants and different Indians as defendants. Since the acts do not provide for personal summons to or service on the Indians, but by their terms would charge the judgments rendered upon whatever may be due them as individuals from the United States, as well as further secure the payment of the judgments by a lien on lands owned by the Indians in severalty, the Court is not justified in extending the controversy beyond the term of the acts authorizing the proceeding. A claimant is not authorized to select particular Indians supposed to be liable to him and sue them in this proceeding. The claim must be 'against the Mississippi Choctaws,' and that means against all of them who were enrolled. This view requires the dismissal of the petitions filed herein of nearly all of the claimants, and intervening petitioners." (Record, p. 188.)

The language of the acts of reference certainly does not in terms limit the right of recovery to services rendered to the class. There was the same reason for affording relief to an attorney rendering service to an individual since without

relief of this character such attorney would be unable to enforce his claim for compensation. Furthermore, the right of no individual Indian was complete and fixed until he had actually removed and lived for a long period on the reservation. Without outside assistance many of them could never have so perfected their claim. This was well known to Congress, and must have been in the mind of the representatives and senators when this relief was offered. This is made perfectly clear when it is recalled that Bounds and Vernon are particularly named in the act of reference, and it must be presumed that Congress was fully advised that their claims were exclusively against individuals for services rendered after the Act of July 1, 1902. Making the judgment a lien upon the land of the individual could not have been inserted upon any other theory than that of an individual judgment for services rendered the individual.

Congress saw that these Indians would be subjected to numerous and vexatious suits, for the enforcement of their contracts for services rendered them, if some provision were not made for the payment of fair compensation for the services so rendered. It is evident therefore that it was for this reason Congress provided that the funds and lands in which these Indians had a property right, which were controlled by the United States, should be subject to the lien of any judgment rendered by the Court of Claims against an individual for services rendered him.

The suggestion that the absence of any provision for individual defense and representation upon the part of the individual Indian manifests an indisputable intention to limit the jurisdiction of the Court, we respectfully submit is not correct. The Act distinctly directs the Attorney General to appear and defend these claimants. This representation is ample and complete. If, as has been held by this Court, in *Mullen vs. United States*, 224 U. S. 448; *Bowling vs. United States*, 233 U. S. 527, and *Heckman vs. United States*, 224

U. S. 413, the United States may, of its own motion and in its own name, institute suits on behalf of individual Indians, certainly Congress has equal authority to provide for the defense of a suit against a tribe of Indians, or individuals, in matters directly affecting their tribal rights and funds. This representation having been provided by Congress, it cannot be said that the fullest opportunity for defense has not been extended to the defendant Indians.

3. Another mistaken view taken by the Court below, as the appellants maintain, is that it was necessary for them to show that their individual efforts secured the relief afforded the Mississippi Choctaws. In other words, that they must show by positive proof that but for their action Congress would not have passed the Act of July 1, 1902. Judge Booth makes this position of the Court plain in his opinion, where he says:

"In addition to what has been said it is absolutely impossible from the record in this case to ascribe to any of the claimants the credit for securing legislation. The Congress acts deliberately, and information respecting matters of legislation is usually found in the several departments of the Government. In Indian affairs a separate branch of the Department of the Interior has been established by law with full jurisdiction over the administration of Indian affairs. The records of this department are reliable and trustworthy, and when Indian affairs engage the attention of Congress the Indian Office is called into consultation, and from its archives official documents supply information forming the basis of Indian rights, both personal and property. It would be a task impossible of performance to segregate the services of these claimants from the influence of the department's efforts in the adjustment of this controversy and say that the claimants exerted an influence that moved Congress into a recognition of the Mississippi Choctaw Indians' rights to citizenship. The usual course of legislation negatives the contention in the very beginning (Record, p. 177.)

And he repeats the same idea in his opinion of July 29, 1917, (Record, page 219):

"The Court in any event can not ascertain from the record that legislation resulted from individual effort. The Congress of the United States acts deliberately. The terms and provisions of any laws passed by Congress can not be attributed to any outside influence or said to result from any personal advocacy of the same, and a claim for pay for legislative services goes no further than the specific things usually performed by an attorney in a court of justice, the very precise steps mentioned by the Supreme Court in *Trist vs. Child*, *supra*. The Court can only find from the records of Congress what transpired with reference thereto. There is no competent evidence in the record upon which the Court can predicate a finding in response to the above request. The fact sought to be elicited is a conclusion and not the statement of a fact."

And again on page 220:

"A. Whether or not the full-blood rule of evidence was adopted by A. S. McKennon in the report of March 10, 1899, as the result, wholly or in part, of the argument and efforts made by Robert L. Owen.

"If the request is material, the fact is not susceptible of proof. The report of Commissioner McKennon is set forth in the findings. The inquiry seeks to elicit a conclusion. As before observed, we can not find from the proof in the record—as a fact—that certain public officials did this thing or that as a result of someone's argument. It is possible that they may have had convictions of their own. We set forth what they did, and if they give reasons therefor, find the same." (Record, p. 220.)

"This Court is unable (and it is no part of the issues in this cause) to find whether or not what the claimants said or did produced a 'powerful sentiment' for the passage of legislation advocated by them." (Record, p. 223.)

If this contention of the Court is correct then it is believed that Congress did a vain thing in referring the case at all to the Court of Claims. It is practically impossible to look into the minds of men and prove what actuated them to do a given thing. No lawyer could establish the fact that his services alone convinced the jury that his client was entitled to a verdict, nor could he prove that but for his argument the Judge would have rendered a different opinion, yet no one would seriously contend that a lawyer might not recover in a given action for services rendered in the presentation of a suit, on the basis of a *quantum meruit*, what his services were fairly and reasonably worth, because it would be vain for him to attempt to prove that the jury-men and the Court would have taken a different view of the facts and the law had it not been for his services. Should a jurymen be called as a witness and be asked the question as to whether he had been influenced by the argument alone, in all human probability he would be unable to answer, and if, in fact, he did attempt to do so, who would be convinced by his evidence? In the same way—it is equally impossible to show that any particular individual induced the members of Congress to vote as they did. In every case they might have voted in exactly the same way without any presentation of argument, but, as in the case of a law suit where the attorney has rendered the service, and attempted to accomplish the result, and the result has, in fact, been accomplished, he is entitled to his fair compensation, so, before Congress, when the services have been rendered, the effort has been made to convince members of Congress that the matter is right and just, and when these efforts have been followed by success, and the results have been accomplished, those who have been engaged in this work are equally entitled to their remuneration, and can not be required, or expected, to do the impossible, and show just the effect on the mind of each member of Congress of the acts which they individually performed.

That the Court of Claims might find it difficult to reach a conclusion as to the value of the services does not relieve it of the duty to do so. That is what Congress directed it to do.

"In estimation of damages the Court of Claims occupies the position of a jury under like circumstances. Damages must be proven. The Court is not permitted to guess any more than a jury, but like a jury, it must make its estimate from the proof submitted. The result of the best judgment of the triers is all that the parties have the right to expect."

United States vs. Smith, 94 U. S. 214.

To assist the Court in reaching its conclusion, it is, of course, proper to introduce, as was done in this case, evidence of what services of the character of those rendered by the appellants are usually estimated to be worth.

The suggestion contained in the opinion of Judge Booth, (R. p. 177), that the size of the fee claimed by the appellants in this case is an indication that

"the whole transaction from its inception to its close was intensely speculative in its character and devoid of the usual and customary relationship that should always obtain between attorney and client in that the former is always charged with the duty of protecting and conserving his client's interest and profit"

is well answered by this Court in its opinion in the case of Bemiss vs. Bemiss, 101 U. S. 42, where this language is used:

"It remains to be considered whether there is in this contract of employment anything which, after it has been fully executed on both sides, should require it to be declared void in a Court of Equity, and the money received under it returned. It was decided in the case of Stanton vs. Embry, 93 U. S. 548 (XXIII, 983), that contracts by attorneys for compensation in prosecuting claims against the United States were not void because the amount of it was made contingent upon suc-

cess, or upon the sum recovered. And the well known difficulties and delays in obtaining payment of just claims which are not within the ordinary course of procedure of the auditing officers of the government, justifies a liberal compensation in successful cases, where none is to be received in case of failure.

"Any other rule would work much hardship in cases of creditors of small means residing far from the seat of government, who can give neither money nor personal attention to securing their rights."

The case of *Stanton vs. Embry*, cited above, lays down the rule that where the compensation has not been fixed it is competent to prove what is ordinarily charged in such cases, and we think this Court would be justified in taking judicial notice of the fact that 15% is not in excess of the ordinary amount charged in cases of this character. We feel that the criticism of the claimants by the Court of Claims in this respect is clearly unjust.

4. This brings us to the consideration of the interpretation placed by the Court of Claims upon the decision of the Supreme Court in the case of *Trist vs. Child*, 21 Wall. 441, and its application to this case. The Court emphatically holds that services rendered in presenting arguments and facts to individual members of Congress can not be made the basis for a claim by an attorney in any case, and the Court cites the case of *Trist vs. Child* in support of this contention. That the failure of the Court to make many of the findings of fact, which the appellants are now asking to have the Court instructed to make, was due to the Court's interpretation of this case, is made plain by the opinion of Judge Booth of Jan. 29, 1917. He says:

"The Congress of the United States concluded the controversy by the enactment of various laws covering the claimed right, and it is for services in connection with the passage of these laws that the claim in issue arises, what is commonly called a 'legislative service.'

For appearances before committees of Congress and other departments of the Government in behalf of a client interested in the passage of legislation, an attorney may lawfully charge fees, but such a character of service is strictly limited. No compensation may be charged or collected, no contracts in reference thereto can be enforced, for any service extending in the slightest degree beyond this well-defined zone of limitation. The personal solicitation of aid from an individual legislator, aid rendered an individual legislator, representations and arguments made for or before an individual legislator, no matter how convincing or under what circumstances, cannot under the law be the basis of a charge for professional services. *Trist vs. Child*, 21 Wall. 450. *The Court in finding the facts and reaching its conclusion of law upon the issues involved in the case has adhered with inflexible rigidity to the principles of law laid down in Trist vs. Child, supra.* We have further elaborated upon this subject in speaking to the requests of claimants wherein in our judgment it is directly in issue." (Record, pp. 212-213.) (Italics ours.)

"B. Whether or not Robert L. Owen, early in 1897, when he 'spoke' to Honorable John Sharp Williams, and submitted to him a copy of the Dancing Rabbit Creek Treaty, as stated in the second paragraph of Finding 11, was at the time recognized by Mr. Williams as speaking in the capacity of an attorney at law in the behalf of the Mississippi Choctaws, and was then requested by Mr. Williams to prepare and submit to him a brief, letter or written argument on the question of the matter of the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation and with which request Mr. Robert L. Owen complied and furnished Mr. Williams with such a brief?

"The fact requested is immaterial. Neither in virtue of an express contract nor upon a *quantum meruit* can a claim for compensation for professional services rendered by a claimant be augmented,*much less predicated, upon the personal solicitations of and from a public Representative. *The Court has considered all testimony tending even in the direction of a claim for*

pay involving personal solicitation, as immaterial and incompetent. (Italeis ours.) In *Trist vs. Child*, 21 Wall. 450, the Supreme Court said:

"We entertain no doubt that in such cases, as under all other circumstances, an agreement express or implied, for purely professional services is valid. Within this category are included drafting the petition to set forth the claim, attending to the taking of testimony, collecting facts, preparing arguments and submitting them orally or in writing to a committee or other proper authority, and other services of a like character. All these things are intended to reach only the reason of those sought to be influenced. They rest upon the same principle of ethics as professional services rendered in a Court of Justice, and are no more exceptionable. But such services are separated by a broad line of demarcation from personal solicitation, and the other means and appliances which the correspondence shows were resorted to in this case."

"The Court regards the request and ones of similar import as immaterial. Whether Mr. Williams regarded Mr. Owen as attorney for the Mississippi Choctaws is likewise immaterial and quite surely incompetent if elicited to establish the case referred under the jurisdictional acts.

"C. Whether or not in 1897 Robert L. Owen presented an oral argument and written brief to the Honorable John Sharp Williams, then a Representative in Congress from the district in which the Mississippi Choctaws then resided, on the question, and in behalf of the rights of the Mississippi Choctaws to citizenship in the Choctaw Nation and in favor of their rights to participate in the partition of the lands of the Choctaw Nation under the provisions of Article 14 of the Dancing Rabbit Creek Treaty between the United States and the Choctaw Nation, of September 27, 1830?

"Whether or not the written brief submitted by Mr. Owen to Mr. Williams was in accordance with the latter's request?

"Inquiry immaterial. Subject covered by discussion under prior request.

"D. Whether or not early in the year 1897 Robert L. Owen submitted an argument to Honorable John Sharp Williams, then a Representative in Congress from the 5th Congressional District of Mississippi, wherein practically all full-blood Choctaws in Mississippi then resided, and, as the result of said arguments and documents submitted by him, Mr. Owen, or the interest created thereby, Mr. Williams became convinced, contrary to his original opinion, of the rights of said Mississippi Choctaws to share in the privileges of Choctaw citizens in the Choctaw Nation under Article 14 of the Dancing Rabbit Creek Treaty, entered into September 27, 1830, by the United States and the Choctaw Nation? "Materiality disposed of by prior discussion. *Trist vs. Child, supra.*" (Record, pp. 216, 217-218.)

And again on pages 225-226:

"J. Whether or not Mr. McMurray and Mr. Van Devanter, who drafted the amendment recognizing the full-blood rule of evidence, did so at the instance of Hon. J. S. Sherman, chairman of the Committee on Indian Affairs of the House of Representatives, before whom Robert L. Owen had argued in favor of the full-blood rule of evidence?"

* * * * *

"J. The facts asked for in this request are fully covered in the Court's findings. It is quite immaterial as to who requested Mr. McMurray or Mr. Van Devanter to draft the legislation; even if the claimants had done so it would be a gratuitous service." (Record, pp. 225-226.)

It will be noted that Judge Booth distinctly asserts that the *Trist* case is directly in point and that their interpretation of it controlled them not only in their conclusions of law, but also in their findings of fact, saying:

"The Court in finding the facts and reaching its conclusions of law upon the issues involved in the case, *has adhered with inflexible rigidity to the principles of law laid down in Trist vs. Child, supra,*" (italics ours)

and he has made it plain in the opinion of the Court (R. p. 213), that facts of the character now asked for were regarded by the Court as immaterial. In fact, he directly states that they are immaterial (R. p. 217).

The facts in the Trist case differ widely from the facts as disclosed by the Record in this case, and we believe the Court of Claims has erred in applying the principles of the Trist case to the facts of this.

In the Trist case this Court said:

"It was, on the part of Child, to procure *by lobby service*, if possible, the passage of a bill providing for the payment of the claim." (*Italics ours.*)

The Court then shows the character of lobby service by quoting from a letter of Child, as follows:

"Please write to your friends to write to any member of Congress. Every vote tells, and *a simple request may secure a vote, he not caring anything about it.* Set every man you know at work. *Even if he knows a page, for a page often gets a vote.*" (*Italics ours.*)
* * *

"In our jurisprudence a contract may be illegal and void because it is contrary to a constitution or statute, or inconsistent with sound policy and good morals."
* * *

"It is a rule of the common law of universal application, that where a contract express or implied is tainted with either of the vices last named, as to the consideration or the thing to be done, no alleged right founded upon it can be enforced in a court of justice."

The Court then cites instances where the rule has been applied such as agreements:

"to pay for not bidding for a contract to carry the mail on a specified route; to pay for suppressing evidence and compounding a felony"; and "to pay for promoting a marriage";

and refers to the case of *Marshall vs. R. R. Co.*, 16 Howard, 314.

The Court then goes on to say:

"We entertain no doubt that in such cases, as under all other circumstances, an agreement express or implied for purely professional services is valid. Within this category are included: drafting the petition to set forth the claim, attending to the taking of testimony, collecting facts, preparing arguments, and submitting them orally or in writing, to a committee or other proper authority, and other services of like character. All these things are intended to reach only the reason of those sought to be influenced. They rest on the same principle of ethics as professional services rendered in a court of justice, and are no more exceptionable." (*Italics ours.*)

What the Court was really dealing with in the *Trist* case is thus described by the Court:

"The agreement in the present case was for the sale of the influence and exertions of the lobby agent to bring about the passage of a law for the payment of a private claim, without reference to its merits, by means which, if not corrupt, were illegitimate, and, considered in connection with the pecuniary interest of the agent at stake, contrary to the plainest principles of public policy. No one has a right, in such circumstances, to put himself in a position of temptation to do what is regarded as so pernicious in its character. The law forbids the inchoate step, and puts the seal of its reprobation upon the undertaking."

And the Court gives the reason for the rule in part as follows:

"A private bill is apt to attract little attention. It involves no great public interest, and usually fails to excite much discussion. Not infrequently the facts are whispered to those whose duty it is to investigate, vouched for by them, and the passage of the measure is thus secured. If the agent is truthful, and conceals nothing, all is well. If he uses nefarious means with success, the spring-head and the stream of the legislation are polluted."

The legislation sought by the Mississippi Choctaws was in no proper sense a private bill. Indian legislation cannot be enacted without proper and careful consideration. All such measures are submitted to the Secretary of the Interior and the Commissioner of Indian Affairs for their investigation and report. One of the important items of service claimed by the appellants, Howe and Field, in this case, is the presentation to the Commissioner of Indian Affairs of arguments that convinced him that the claim was just, and resulted in securing his active co-operation in advocating the passage of the legislation establishing the rights of the Mississippi Choctaws.

The case of *Marshall vs. The B. & O. R. R. Co.*, 16 Howard, 314, referred to in the opinion in the *Trist* case is a typical instance of the kind of services for which compensation cannot be allowed. We ask the attention of the Court to the facts of that case as set forth on pages 314 to 319:

In the opinion on page 334, Justice Grier says:

"Legislators should act from high considerations of public duty. Public policy and sound morality do therefore imperatively require that courts should put the stamp of their disapprobation on every act, and pronounce void every contract the ultimate or probable tendency of which would be to sully the purity or mislead the judgment of those to whom the high trust of legislation is confided."

Certainly there is not the slightest intimation anywhere in the testimony in this case, or in the findings of the Court that the ultimate or probable tendency of any of the contracts, or of the services rendered by any of the claimants, would be to sully the purity or mislead the judgment of Congress.

These services had all been rendered before the jurisdictional acts were passed, and Congress must be assumed to have known of the nature and character of the services and of the contracts under which they were performed. By re-

ferring the matter to the courts, Congress has stamped the transactions as reputable and proper.

The services undertaken and rendered by the appellants were not lobbying services, but legal and professional services, without any taint of fraud or corruption. The distinction is obvious and well recognized.

"Contracts for lobbying stand upon a very different footing, as was clearly shown by the *Chief Justice* in commenting upon a prior decision, in which the opinion was given by *Justice Swayne*. *Trist vs. Child*, 21 Wall. 450 (88 U. S. XXII, 624).

"Nothing need be added to what is exhibited in the case last mentioned to point out the distinction between professional services of a legitimate character, and a contract for an employment to improperly influence public agents in the performance of their public duties. *Tool Co. vs. Norris*, 2 Wall. 53 (69 U. S. XVII, 870).

"Professional services, to prepare and advocate just claims for compensation, are as legitimate as services rendered in Court in arguing a cause to convince a court or jury that the claim presented or the defense set up against a claim presented by the other party ought to be allowed or rejected. Parties in such cases require advocates; and the legal profession must have a right to accept such employment and to receive compensation for their services; nor can courts of justice adjudge such contracts illegal, if they are free from any taint of fraud, misrepresentation, or unfairness.

"By the contract in question, the amount of compensation to be paid was not fixed; and in order to enable the jury to determine what the plaintiff was equitably entitled to recover, he called other attorneys, and proved what is ordinarily charged in such cases; and the defendants excepted to the ruling of the Court, in refusing to charge the jury that they should disregard such testimony.

"Attorneys and solicitors are entitled to have allowed to them, for their professional services, what they reasonably deserve to have for the same, having due reference to the nature of the service and their own standing in the profession for learning, skill and proficiency;

and, for the purpose of aiding the jury in determining that matter, it is proper to receive evidence as to the price usually charged and received for similar services by other persons of the same profession practicing in the same Court. *Vilas vs. Downer*, 21 Vt. 419."

Stanton vs. Embry, 93 U. S. 548;

Wright vs. Tiddetts, 91 U. S. 252;

Nutt vs. Knut, 200 U. S. 12;

Ocashtyan vs. Winchester Arms Co., 103 U. S. 275.

As indicated above, the Mississippi Choctaw legislation was not in the nature of a private bill. It inevitably involved close official scrutiny. None of the dangers referred to in the *Trist* case were present. The Dawes Commission, the Commissioner of Indian Affairs, the Secretary of the Interior, and the officials of the Choctaw Nation were all on watch and alert. There was no opportunity for lobby work. Congress had to be convinced of the merits of the case. There is no intimation in the *Record* that personal solicitation of favor in the lobbying sense was indulged in. There is abundant evidence of attempts to convince individual Representatives and Senators of the merit and justice of the claim of the Mississippi Choctaws, and that they were legally entitled to citizenship in the Choctaw Nation. These efforts were successful. Congress recognized this and, by the acts of reference, endeavored to secure for those performing the service adequate compensation. The Court of Claims has failed to carry into effect the plain purpose of Congress.

5. The Court refused to make findings of fact requested by the appellants relative to the recognition of certain of the appellants by the Commissioner of Indian Affairs, by the Committees of Congress, and by the Courts in the Indian Territory, as attorneys representing the Mississippi Choctaws. This was done on the theory that such findings were

immaterial, as is shown by the opinion of Judge Booth of Jan. 29, 1917, where, in explaining the refusal of the Court to make similar findings on behalf of Robert L. Owen, he says:

"The fact, if shown, is immaterial. The issue is not what the Committees of Congress, etc., recognized as the true representative capacity in which claimants appeared. The Court is trying a law suit committed to it by special acts of jurisdiction, and proof must be adduced showing the true relationship between the claimants and the Indians. This obviously can not be done by attempting to show that certain people recognized the claimants as appearing in a certain capacity, and any evidence tending toward that end is incompetent and immaterial. The parties mentioned were not charged with an investigation of this particular fact." (Record, p. 224.)

Here again, we submit, the Court failed to recognize the relation of the Indians to the Government, and the fact that the Commissioner of Indian Affairs, and the Committees of Congress, when acting in regard to Indian matters, are, in fact, acting as representatives of the Indians. It therefore is material to show that the committees of Congress and the Commissioner of Indian Affairs recognized these attorneys as the representatives of the Indians and co-operated with them in the presentation of the claim. The appellants allege that the Record below shows Field and Howe were recognized by the Commissioner of Indian Affairs as attorneys for the Mississippi Choctaws, and that Commissioner Jones, through their efforts, became convinced that the claims of the Mississippi Choctaws were just, and that he thereupon co-operated with them, and secured the support of various members of Congress for the measure granting the Indians relief. These appellants are now claiming that Field and Howe were working in good faith as attorneys endeavoring to secure legislation favorable to the Mississippi Choctaws,

and that they held contracts with the Mississippi Choctaws, both as a band and through individuals, which authorized them to so act; that these contracts, or some of them, had been presented to the Commissioner of Indian Affairs for his consideration and approval; that the Commissioner had failed to approve them only for the reason that he believed that the Mississippi Choctaws did not come under the provisions of Section 2103 of the Revised Statutes of the United States relative to Indian contracts, but that he had considered such contracts to the extent of recognizing Field and Howe as attorneys representing the Mississippi Choctaws. They are contending, further, that acting upon this recognition, Field and Howe performed services; that their right to represent the Mississippi Choctaws, under such contracts as they had, was not questioned, but, on the contrary, was recognized by the head of that Department which was peculiarly charged with the regulation of Indian affairs, to wit, the Bureau of Indian Affairs. Under the act of reference in this case, and upon a claim upon a *quantum meruit*, we submit that such recognition by the Government official having supervision of Indian affairs is a material fact which should have been found, and that the Court was in error in holding such facts to be immaterial.

As already stated, the appellants believe that as the Mississippi Choctaws are Indians and their status as Indians has been fully recognized by Congress, the principles that might be applicable in the case of attorneys dealing with citizens fully *sui juris* are not to be enforced as against these appellants. We believe that Congress had full and complete power to recognize the fact that services had been rendered by these appellants to the Indians, and to provide for reasonable compensation to be paid to the appellants for the services rendered. That this right existed independent of any contractual relation between the Indians and the appellants, and that by the enactment of the Acts of Reference in

this case, Congress did undertake, on behalf of the Indians, to compensate the appellants for all services rendered the Indians in the matter of their claim for citizenship in the Choctaw Nation, to be based upon the value of the services each may have in fact rendered. This contention is based upon the following well recognized legal propositions:

Congress has plenary power and guardianship over Indians and their communal and restricted property.

United States vs. Kagama, 118 U. S. 375-384;

United States vs. Rickert, 188 U. S. 432 (47-532);

Tiger vs. Western Investment Co., 221 U. S. 286 (55-738);

Heckman vs. United States, 224 U. S. 432 (56-832);

Mullen vs. United States, 224 U. S. 448;

Bowling vs. United States, 233 U. S. 528.

Congress alone can determine when this guardianship shall cease.

United States vs. Rickert, 188 U. S. 432;

Tiger vs. Investment Co., 221 U. S. 280.

The fact of citizenship in a State does not destroy or lessen this power and guardianship.

(*Ibid.*)

Under this power "in determining what is essential to the protection of the Indians, Congress is invested with a wide discretion, and its action, unless purely arbitrary, must be accepted and given full effect by the courts."

Perrin vs. United States, 232 U. S. 478-486 (58-695);

Johnson vs. Gearlds, 234 U. S. 422 (58-1383);

Heckman vs. United States, 224 U. S. 413 (56-832).

THE ESTATE OF CHESTER HOWE.

We respectfully submit that under Finding of Fact XXXIII (R. p. 116), the estate of Chester Howe is shown to be entitled to a judgment. The Court of Claims in its opinion (R. p. 178), in speaking of Howe says that he advocated the cause of the Mississippi Choctaws "*with great faithfulness and signal ability.*" With such a splendid tribute to his services it does not seem possible that any argument is needed to establish the right of his estate to a judgment under the acts of reference in this case. The Findings are not sufficiently complete to enable this Court to direct the entry of a judgment for any specific sum, but the claim should certainly be remanded for further findings with a direction to enter judgment for the value of the services which the Court of Claims has found he did render with great faithfulness and signal ability.

THE CLAIM OF T. A. BOUNDS.

The facts disclosed by Finding XXXVI (R. p. 121) show clearly that T. A. Bounds rendered services to individual Mississippi Choctaws for which he is entitled to a judgment under the acts of reference. The particulars of these services are not sufficiently set forth in the Findings and his claim should be remanded for additional findings.

THE CLAIM OF WILLIAM N. VERNON.

The facts disclosed by Finding XXXVII (R. p. 121) entitle William N. Vernon to a judgment for services rendered individual Mississippi Choctaws. The Court dismissed his petition on the ground that the acts of reference did not authorize judgment against individuals. This we have tried to show was error. If we are right in this, the claim should be remanded for further findings of fact.

THE CLAIM OF J. J. BECKHAM.

Finding XL (R. p. 126) shows that J. J. Beckham rendered services to individual Mississippi Choctaws for which he should be compensated under the acts of reference, if services to individual Indians come within the provisions of the acts of reference, as we insist they do. As the facts are not sufficiently stated by the Court of Claims his case too should be remanded for additional findings.

THE CLAIM OF MADISON M. LINDLY AND WALTER S. FIELD.

Finding XLII (R. p. 128) is incomplete and insufficient. The Court of Claims has not stated that Field and Lindly were engaged in working to establish the rights of the Mississippi Choctaws before the Dawes Commission, the courts in Indian Territory, the Indian Office, the Interior Department, and before Congress and among individual members of the House and Senate.

The Court has not stated that Field and Howe were distinctly and continuously recognized by Wm. A. Jones, then Commissioner of Indian Affairs, as attorneys working for the Mississippi Choctaws, and that he, as Commissioner, co-operated with them in furthering the interests of the Mississippi Choctaws.

These facts, fundamentally vital to the claim of these appellants, as we view the law, have not been stated by the Court. These facts are, as we view the case, all that need be established in order to entitle Field, Lindly and Howe to recover.

Our contention is that it is unnecessary to establish any direct contractual relation with the Mississippi Choctaws; that it is utterly immaterial whether there was a valid Band contract with the Indians or not, or whether there were any individual contracts.

If Field and Howe, believing they were authorized to act, in fact did act, and acted with the knowledge and with the co-operation of the Commissioner of Indian Affairs, and their acts can reasonably be assumed from the testimony to have aided the Indians in securing their rights, then they have fully brought themselves within the terms of the jurisdictional acts, and are entitled to recover in this action.

But the Court of Claims has not stated these facts, which we regard as so vital, and thus has limited the scope of our possible argument before this Court.

We only ask for a fair opportunity to present the legal question in a full and adequate way. To do this we must have findings that show that Field, Lindly, Howe and London were actually associated in working for the Mississippi Choctaws. We must further have a finding to show that this work was done with the knowledge of the Commissioner of Indian Affairs.

Having these facts shown in the Record, we are then in position to argue before this Court our contention that the Court of Claims is in error in holding that actual contractual relation between the appellants and the Mississippi Choctaws must be established, and is also in error in holding that the particular and exact effect upon the minds of members of Congress must be shown in order to establish service that was beneficial to the Mississippi Choctaws within the meaning of the Acts of Congress. We contend that by the very nature of things it is impossible for any one to show by direct positive proof what induced Congress to enact this legislation. We contend that Congress by its acts of reference never intended to require this. We contend that proof of active, intelligent effort to secure the legislation must be presumed to have aided in securing it.

The Court excluded certain testimony relative to the contract of co-partnership between Field, Lindly and Howe and in regard to the band contract in the name of Lindly, both of which, as it is claimed, were before the Commissioner of In-

dian Affairs and recognized by him as valid. Judge Booth in speaking of this, says:

"The alleged written co-partnership between Field, Lindly and Howe is attempted to be established by a copy of the same. The Court discards it, for Howe was dead when it was first produced and his signature does not appear thereon, and no effort is made and does not appear to have ever been made to bind Arnold, Hudson or London to the agreement in writing; and inasmuch as Arnold directly contradicts, and Hudson prefers no claim thereunder, furnishing no proof thereof, this phase of the association is left alone upon the unsupported testimony of Field and Lindly." (Record, p. 180.)

Again on page 181, in speaking of the band contract, he says:

"The execution of the original can not be sustained by a simple recitation of individual opinion respecting its acknowledgment by those especially interested in sustaining the same. Not a single witness is produced to identify the signatures of the alleged parties thereto, when, before whom, and in what manner or even the capacity or authority of the officer in Mississippi before whom it is alleged to have been taken. The whole transaction is entirely too indefinite, too much is left to inference and conjecture, too many implausible and contradictory statements with reference thereto abound, to warrant the court in the light of the long history of the life and local conditions of the Choctaw Indians in Mississippi to attach weight to an alleged contract of this character."

The reasons given by the Court for discarding the co-partnership agreement that Howe was dead when it was first produced and his signature does not appear thereon, and that no effort is made and does not appear to have ever been made to bind Arnold, Hudson or London to the agreement in writing, are certainly not sufficient to exclude it as evidence. This claim is not made in derogation of any right of

Howe. It is made by Field and Lindly in support of Howe's claim just as much as it is in support of their own.

The appellants claim that there is evidence in the case that this copy was taken from Howe's files, and Howe's executrix in her second amended petition (Appendix A, page 63), claims through the same band contract. The testimony of Field and Lindly, therefore, was admissible in support of this co-partnership agreement, and the findings should have been made covering the facts.

In subdivisions 8 to 12 of the appellants' motion, reference is made to Band Contracts alleged to have been entered into by certain bands of Mississippi Choctaws with the appellant, Madison M. Lindly, and to an agreement alleged to have been entered into by Lindly with Field and Howe.

The contention of the appellants, Lindly, Field and Howe, is that if the Court of Claims had made Findings of Fact based upon the evidence before them covering these points, it would appear that Field and Howe left with the Commissioner of Indian Affairs a paper writing which upon its face purported to be executed in full compliance with Sec. 2103, U. S. Revised Statutes; that this paper writing purported to be a contract between the Bands of Mississippi Choctaws and Madison M. Lindly for the prosecution of the claim of the Mississippi Choctaws, and that the certification of judges of courts of record, under the seals of the courts, were attached showing the full authentication of the parties to the contract, as required by law. That it would be further made to appear that this paper writing was examined by the officials of the Indian Office and found to be regular in every particular, but was not approved because at that time the Indian Office did not think it had jurisdiction over the Mississippi Choctaws. That it would be further made to appear that accompanying this paper writing was another paper writing establishing an association between Lindly,

Field and Howe. That these two paper writings had been lost.

With these facts established, these appellants, Lindly, Field and Howe, would be in position to contend in this Court that they had proven a contractual relation with the Mississippi Choctaws; that the certification of the judges of the Courts of record, under the seals of the Courts, established the facts thus certified to so far as the law required such certification.

That the certificates established not only the genuineness of the signatures, but likewise the fact that the parties were the parties they claimed to be, and were acting in the capacity and by the authority under which they were purporting to act.

This principle is well established:

"It is a presumption of law that all public officers and especially such high functionaries, perform their proper official duties, until the contrary is proved.

"When an act is to be done, or patent granted upon evidence and proofs to be laid before a public officer upon which he is to decide, the fact that he had done the act, in granting the patent, is *prima facie* evidence that the proofs have been regularly made and were satisfactory.

"No other tribunal is at liberty to re-examine or controvert the sufficiency of such proofs when the law has made the officer the proper judge of their sufficiency and competency."

P. & T. R. R. vs. Simpson, 14 Peters, 448-458;
See also—

Boulden vs. Monie, 7 Wheat. 122;

Campbell vs. Gordon, 6 Cranch. 176-182;

Cover vs. Manaway, 115 Pa. 338; 8 Atl.;

Rollins vs. United States, 23 Ct. Clms. 122.

"The certificate appearing on its face to be in conformity with the statute, is proof of its own genuineness."

Chitty on Bills, 642A.

"Where the certificate describes the proper officer acting in the proper place, it is taken as proof both of his official character, of his signature and of his local jurisdiction."

Thurman vs. Cameron, 24 Wend. 87;

Rhoades vs. Selin, 4 Wash. C. C. R. 718;

Willink vs. Miles, 1 Peters C. C. R. 429.

These authorities show that if the execution of the band contract is shown by the evidence to have been duly certified by courts of record, as required by law, no further proof of execution would have been required if the original contract had been offered in evidence. This being true, the fact being shown that such a contract had been in existence, but had been lost, with full proof of the terms of the contract and of the fact that the certificates of the judges of the courts of record as to the execution were attached, no further proof of the execution is necessary.

Riggs vs. Tayloe, 9 Wheat. 483;

De Lane vs. Moore, 14 How. 253;

Palmer vs. Logan, 4 Ill. 56;

25 Cyc. 1625.

The case of Nash vs. Williams, 20 Wall. 226, is particularly in point. There was offered in evidence in that case a copy of a certified copy of a judgment. The record of the judgment had also been destroyed. The copy of the certified copy was held to be competent evidence. The Court considers the validity of a certain administrator's sale, and says:

"The order of sale sets forth that the claim has been allowed by the administrator, but is silent as to its approval by the judge. The plaintiffs in error argued that this omission rendered the order a nullity." * * * "Jurisdiction is the power to hear and determine. To make the order of sale required the exercise of this power. It was the business and duty of the Court to ascertain and

decide whether the facts were such as called for that action." * * * "In the absence of fraud no question can be collaterally entertained as to anything lying within the jurisdictional sphere of the original case. Infinite confusion and mischief would ensue if the rule were otherwise. These remarks apply to the order of sale in question. The county Court had the power to make it and did make it. It is presumed to have been properly made, and the question of its propriety was not open to examination upon the trial in the Circuit Court." * * * "As regards public officers, acts done which presuppose the existence of other acts to make them legally operative, are presumptive proofs of the latter."

Bank vs. Dandridge, 12 Wheat. 70.

Under the law established by the above decision, the band contracts would be fully proved and authenticated if the Findings requested had been made. The Findings would then show that the original contract had existed, and had been lost. That, in accordance with the requirements of law, the judges of two courts of record under seal certified to the execution of the contract. These certifications would be presumptive proof that the parties were the parties they represented themselves to be, and had the authority they were assuming to exercise. It was manifestly the duty of the judges under the law to determine these facts before making the certification. The certification therefore establishes these essential facts.

In any event, if these facts had been found as requested they would have supported the argument on behalf of Lindly, Field and Howe that they had established a *status* which, under the acts of reference, would entitle them to recover for the reasonable value of the services rendered by them. It would then be possible to insist that they were not intruders, but were acting in good faith in the full belief that they were authorized to act. This, we submit, would justify a judgment in their favor on the basis of a *quantum meruit*, under the acts of reference.

We respectfully submit that the Court of Claims should have settled bills of exception as requested by the appellants, Field and Lindly. (R. pp. 94 and 101.)

That a bill of exceptions is an appropriate and proper form of procedure in the Court of Claims, is shown by the following citations from Supreme Court decisions:

"Whilst we are of the opinion that the appellants are entitled to have the findings made complete on the points indicated by the interrogatories, either affirmatively or negatively, we do not regard a *certiorari* as the proper mode to effect the object.

"If that Court (Court of Claims) should refuse, with proper evidence before it, to find a material fact desired by either of the parties, the proper remedy would be to make a request that such findings be made, and to except in case of refusal."

U. S. vs. (Adams) Child, 9 Wall. 661; Book 19, Co. Op. Ed., p. 809.

"The fifth (rule as to appeals from the Court of Claims) permits either party to call for a finding upon special question deemed material to the judgment in the case, and, if refused, to ask this Court to pass upon the materiality of the fact alleged, and should it be considered material, to send down for the findings. Such is the construction given the rules in *Mahan vs. N. Y.*, 14 Wall. 112. The object is to present the question here as upon an exception to the ruling of the Court below in respect to the materiality of the fact. For that purpose it must have been submitted to the Court in a written request as provided in the rule."

Driscoll Case, 131 U. S. Appx., CLIX, Book 24, Co. Op. Ed., p. 596.

"If the Court of Claims refuses to find as prayed, the prayer and refusal must be made part of the record, so that this Court can determine whether the question is one so necessary to the decision of the case that it will send it back for such finding."

Mahan vs. U. S., 14 Wall. 109.

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"If the Court of Claims refuses to find as prayed, the prayer and refusal must be made part of the record, so that this Court can determine whether the question is one so necessary to the decision of the case that it will send it back for such finding."

Mahan vs. U. S., 14 Wall, 109.

The way to make such a refusal a part of the Record, is, as shown in the two cases cited, by taking an exception and this we submit necessitated bills of exception for the purpose of showing the fact and to complete the Record.

"On an appeal, the parties were entitled to have all the facts proved in the case before the Court below, in the judgment of the Court truly found, and stated in the record, that either deemed material to the decision; and as we have seen, the remedy is ample to correct any mistakes committed, if applied for prior to the hearing in this Court."

U. S. vs. Adams, 8 Wall. 654.

The same rule applies to admiralty cases. In *Duncan vs. The Francis Wright*, 105 U. S. 583, the Supreme Court held:

"If the Circuit Court neglects or refuses on request, to make a finding, one way or the other, on a question of fact material to the determination of the cause, when evidence had been addressed on the subject, an exception to such refusal presented by a bill of exceptions, may be considered here on appeal."

So, too, if the Court against remonstrance finds a material fact not supported by any evidence.

"In the one case the refusal to find would be equivalent to a ruling that the fact was immaterial, and in the other that there was some evidence to prove what is found when in truth there was none. Both these are questions of law and proper subjects for review in an appellate Court."

Whether or not circumstantial facts

"establish the ultimate fact to be reached is, if a question of fact at all, to say the least, in the nature of a question of law." * * *

"The inquiry thus presented is as to the legal effects of facts proved, not of the evidence given to make the proof, and the question of practice to be settled is, whether under our rule the judgment of the Court of Claims, as to the legal effect of what may perhaps, not

improperly be called the ultimate circumstantial facts in a case, is final and conclusive, or whether it may be brought here for review on appeal." * * *

"To avoid misapprehension in the future we take this opportunity to say that we do not only think such a judgment may be reviewed here, if the question is properly presented, but when the rights of the parties depend upon circumstantial facts alone, and there is doubt as to the legal effect of the facts it is the duty of the Court, when requested, to so frame its findings as to put the doubtful question in the record. After that the question is as to the effect of the facts, and when the evidence in a case had performed its part and brought all the facts that have been proved, these facts thus established are to be grouped, and their legal effect as a whole determined."

U. S. vs. Pugh, 99 U. S. 265.

The appellants, Field and Lindly, believe, as already indicated, that the circumstantial facts requested by them to be found by the Court of Claims are material and necessary for the proper consideration of the legal points which they desire to raise on their appeal. As required by the decisions of this Court they made requests for these Findings of Fact, which the Court of Claims deemed immaterial and failed to make. To this action the appellants, Field and Lindly, duly excepted. That these steps were taken and that the foundation was laid both by the introduction of evidence and by a proper request for Findings, could, as we submit, be best set forth by the settlement of Bills of Exceptions, as there does not appear to be, under the rules, any other way of legally establishing these facts in the Supreme Court, that is to say, no provision appears to have been made by the rules for the method by which the Supreme Court shall be satisfied, that the requests for Findings of Fact were made and that there was evidence in the Record below tending to establish those facts.

Respectfully submitted,

GUION MILLER,

Attorney for Appellants.

APPENDIX A.

COURT OF CLAIMS OF THE UNITED STATES.

No. 29,821.

THE ESTATE OF CHARLES F. WINTON, DECEASED, AND
OTHERS,

v.

JACK AMOS AND OTHERS, KNOWN AS THE "MISSISSIPPI
CHOCTAWS."

SECOND AMENDED PETITION IN BEHALF OF THE ESTATE OF CHESTER HOWE, DECEASED.

Now comes Katie A. Howe, executrix of the last will and testament of Chester Howe, deceased, by her attorney, William W. Wright, and for her second amended petition respectfully shows:

In order that the original petition filed herein may conform to the record proof, it is alleged as follows:

1. That Chester Howe, deceased, was originally employed on and in behalf of all resident Mississippi Choctaws, residing in the State of Mississippi (including those now appearing by name upon the final approved rolls of the Choctaw Nation) at their request and through their authorized representatives, by virtue of a certain power of attorney and general contract, set forth at length on page 927 *et seq.* of the printed record, and also by virtue of a certain "Band" contract referred to in the record testimony of the intervenor Walter S. Field.

2. That thereafter said Chester Howe, by reason of diverse agreements in writing, acquired an undivided one-third interest in certain individual contracts with Mississippi Choctaw Indians, which were taken through J. E. Arnold, the firm of Hudson & Arnold, and L. P. Hudson.

3. That legal services were rendered by Chester Howe, deceased, before Congress and the Interior Department, in the matter of claims of the Mississippi Choctaws to citizenship in the Choctaw Nation, covering a period of years from about 1897 to the year 1907.

4. That Walter S. Field, one of the interveners in this case, was an associate of Chester Howe, deceased, in the matter of the claims of the Mississippi Choctaws to citizenship in the Choctaw Nation.

Respectfully submitted,

W. W. WRIGHT,
Attorney for Katie A. Howe, Ex.

APPENDIX B.

The deposition of W. A. JONES, for W. S. Field, Intervenor, taken at Washington, D. C., on the 12th day of June, A. D. 1911.

Claimant's counsel, WEBSTER BALLINGER, for Mr. Field.
W. W. WRIGHT, for Howe Estate.

W. E. RICHARDSON, for Mr. Arnold.

W. H. ROBESON, for Mr. Arnold.

Defendant's counsel, GEO. M. ANDERSON.

DIRECT EXAMINATION BY MR. BALLINGER.

Q. Mr. Jones, are you related in any way to any of these parties to this proceeding? A. Not that I know of.

Q. Have you any interest whatever in this proceeding? A. None whatever.

Q. Have you previously given or made any deposition in this proceeding? A. I have.

Q. I hand you a deposition taken upon interrogatories and dated the 11th day of August, 1909, upon which you were cross-examined on the 28th day of July, 1910, filed in the Court of Claims October 4, 1910, and ask you if this is one of the depositions you have previously given? (Handing papers to witness). A. That is my deposition and those are my signatures.

Q. I will ask you whether you gave a deposition in this proceeding on the 19th day of June, 1911, and which was filed in the Court August 7, 1911? A. I gave a deposition in Chicago and I presume this is correct—yes, that is correct.

Mr. Anderson: The defendants object to any reference to this alleged ex parte statement given in Chicago on the date referred to on the ground that same has been suppressed and the deposition ordered to be taken de novo.

MR. BALLINGER:

Q. Mr. Jones, are you acquainted with Walter S. Field?

A. I am.

Q. When did you first become acquainted with him? A. Well, I couldn't tell you the year, but it must have been in 1872, I think. It was a great many years ago, but I can't fix the date.

Q. Prior to 1897 was your acquaintance with Walter S. Field somewhat intimate? A. Yes, sir.

Q. What were your relations? A. You mean as far as acquaintanceship was concerned?

Q. Yes? A. He lived in a neighboring town to where I lived, and when I first met him he was principal of school at Avoca and I was county superintendent. I think he had either just graduated from the university or was on the point of graduation, and my relation with him became quite intimate, owing to my official relations with the schools. I also knew his family quite intimately for some years previously.

Q. Mr. Jones, what official positions, that is, positions under the Government of the United States, have you held? A. Only one, Commissioner of Indian Affairs.

Q. When were you appointed and when did you leave the service? A. I think it was May 4, 1897, that I took the oath of office. My resignation took effect January 1, 1905.

Q. While you were Commissioner of Indian Affairs was your attention at any time called to the claims of the Mississippi Choctaws? A. Yes, sir.

Q. Please state by whom the matter was brought to your attention and approximately when? A. I think it was about two, possibly three months after I took charge of the office that Mr. Howe came to me and started to discuss the Mississippi Choctaw case, which at that time was new to me. I did not know there were any such people, and I told him that I was not familiar with the practice of the office and knew nothing of such matters. I do not recall whether he submitted a statement in writing or not, but I do not think he did. I think we simply discussed it informally and I told him I would take it up with the clerks in the office, who were better posted than I in such matters, and he could call again. He did call again and brought with him Mr. Field, whom I had known for a good many years, and we discussed the situation, and I cannot recall now whether they presented any written documents bearing on the subject or not. My impression is that they did. I cannot remember the details of the conversation, but I know that I consulted with the clerks

in the office and asked them to give me their opinions on the case. That was the first time.

Mr. Anderson: When was that? A. It was in the year 1897. It was two or three months after I got to Washington.

Mr. BALLINGER:

Q. You mean two or three months after you became Commissioner? A. After I became Commissioner, yes.

Q. Please state whether at that conference or at any other conference had by you with any person relative to the claims of the Mississippi Choctaws, any question arose with reference to contracts of employment by attorneys? A. Yes, sir. Mr. Howe claimed to have a contract, I think, with some band or organization of the Mississippi Choctaws to represent them in a legal capacity. At the second interview that we had, when Mr. Field came with him, he stated that Mr. Field was interested with him in this contract, and asked me to go into it as thoroughly as I could. They were both present at the time. Mr. Howe did most of the talking.

Q. Was there subsequently a contract presented to the office for approval by either Mr. Howe or Mr. Field, a contract with the Mississippi Choctaws? A. My recollection is that there was a written contract.

Q. Please state what that contract was, as near as you can recall? A. I cannot go into the details of it because I don't remember it, but it was based, the fee was based, on a certain percentage of what they could recover. At that time I was not familiar, as I stated, with the practice of the office, but after consulting with the clerks and submitting, as I remember, the outlines of the contract, they decided that the Mississippi Choctaws were not under the supervision of the Indian Office.

Q. Do you recall whether that contract was an individual contract or whether it was a contract with a number of people collectively? A. My recollection is that it was with a band or collection, or some organization of the Mississippi Choctaws.

Q. Was that contract examined in your office as to its legal form? A. I think it was.

Q. Do you recall whether there was any objection to it on that ground? A. My recollection is that there was no objec-

tion to its form, that it was perfectly proper except that, as I stated, the office decided that it had no jurisdiction over the matter, and it was useless to take up the matter further on that line.

Q. Do you recall what became of the contract after it was submitted to your office? A. No, I do not, but I do not think it was filed, because I told Mr. Field that I did not think it was worth while to file documents over which we had no jurisdiction, and what was done with the contract I don't know.

Q. After this band contract was withdrawn did you have any conferences with either Mr. Field or Mr. Howe relative to any other contracts that might be taken with these Indians?

Mr. Anderson: I object to that as leading.

A. Yes, several of them.

MR. BALLINGER:

Q. Please state, as nearly as you can recall, what the matter was that was discussed and considered? A. After going over this first contract I think I suggested to Mr. Field that possibly the better way for him to do would be to get an individual contract with the members, which I thought he could do, without coming to the department for its approval.

Q. Have you any knowledge whether such individual contracts were thereafter taken? A. I do not remember that I have ever seen any of those individual contracts, but it was my impression—or my understanding—that there were a number of them. How many I don't know.

Q. Was there any understanding with your office relative to the individual contracts as to the amount of the fee to be charged? A. I cannot recall that.

Q. Had your attention or the attention of your office been called to contracts being made with the Mississippi Choctaws by any other attorneys at that time? A. I think my personal attention was called to it, but as to the attention of the office I do not remember.

Q. Do you recall the percentage named in the other contracts? A. No, I do not.

Q. During the entire time that you were Commissioner of Indian Affairs did any other attorney other than Howe and Field appeal to you for assistance in protecting the rights of

the Mississippi Choctaws? A. I have no recollection of any attorney or any one else mentioning the matter. In fact, I don't think any one did.

Q. Will you please state, Mr. Jones, how frequently Mr. Howe and Mr. Field or either of them called at your office and discussed this matter with you? A. I can't recall the particular times or anything like that, but they were there and very persistently a great deal of the time. Mr. Field, owing to my relation with him at home, was a sort of a privileged character, in a way—that is, he used to drop in there occasionally, simply for a visit, and almost in every instance he would bring up this case, until I got somewhat tired of him and told him that officially I could not do much for him because of the fact that I was not posted on it except as to what he told me and what the clerks in the office had told me, that they were not under our jurisdiction. But he and Mr. Howe would come there at least once a week, possibly oftener, to try to get me interested in the case and to assist them in some way.

Q. Did they ever call on you at other places relative to this matter? A. Yes, sir; Mr. Field used to come to my house. I don't think Mr. Howe ever did.

Q. Were their calls at your office and other places upon you relative to matters pending in your office relating to the Mississippi Choctaws? A. Not always, but very often Mr. Field would come in in regard to other matters.

Q. What I meant was, did they relate to matters pending in your office or Congress relative to Mississippi Choctaws? A. Both in the office and in Congress. Mr. Field asked me if I would not assist him in the committees of Congress, especially the Senate Committee in regard to some legislation concerning this matter.

Q. Did Mr. Field ever call on you accompanied by any members of the Senate and discuss the claims of the Mississippi Choctaws with you? A. Yes, sir.

Q. Can you state the name or names of the Senator or Senators? A. Senator Quay came there several times.

Mr. Anderson: When was that? A. Senator Quay called there several times, but I could not tell you the year. It was probably the second year after I came here. This matter is fifteen years ago, you know.

Mr. Anderson: Two years after you came would be 1899, then? A. Perhaps so. Yes, I should judge it would be somewhere about there.

Mr. Anderson: Or 1898? A. Yes, I should think so, or possibly 1900. Mr. Field was very diligent at all times, and I remember that he brought Senator Quay there several times, two or three times, and Senator Platt at least once. I remember that very distinctly, but it is only a general recollection I have of the time.

MR. BALLINGER:

Q. Did you, at Mr. Field's solicitations, call on any members of the Senate with him? A. Yes, sir.

Q. State what Senator or Senators? A. He and I called at his solicitation at Senator Quay's home in the northwest part of the city. I don't remember the exact place, but I think it was on K street. We called there one evening and discussed the matter, and I think he and I also called twice on Senator Platt in his office in the Capitol Building in regard to the matter. I think that I also at his solicitation went into a conference in regard to this matter with Senator Platt. It was either Platt or Quay, I have forgotten which.

Mr. Anderson: What were the dates of those conferences? A. I can't give you the dates.

Mr. Anderson: Those answers are all objected to because the dates have not been given.

MR. BALLINGER:

Q. At the conference you refer to, at which you called on Senator Platt, state what that conference was about? A. My recollection now is that an item was proposed to be inserted in the Indian appropriation bill, I think, in regard to this matter, as a sort of compromise, and I am not sure but that Senator Platt asked me about it or that Mr. Field asked me to consult with Senator Platt, and in that conference we discussed this proposed item. I cannot say now what the substance of the compromise was, but I know it was for the relief of these Indians along lines suggested by Mr. Howe and Mr. Field. I think that Mr. Field had a talk with Senator Platt the previous day and explained what he wanted, and Senator Platt wanted my opinion and my confirmation of the plan proposed.

Q. Do you recall who were present at that conference? A. No, I do not. I think, though, that Senator Stewart was

chairman of the Committee on Indian Affairs at that time, but as to who were present I don't remember.

Q. Were there any members of the House present? A. No, sir. I think it was a committee meeting, not a conference, but a meeting of the Senate Committee. I would not be sure whether it was a conference with the House Committee, but as a matter of fact I do not recall ever having any conversation with any member of the House Committee on Indian Affairs in regard to this matter. My activities were confined entirely to the Senate Committee.

Q. Were you frequently present at the meetings of the conference committees of the House and Senate on Indian legislation? A. Yes, by invitation, and also it was considered, I believe—whether it is now or not I don't know—that the Commissioner of Indian Affairs was ex-officio a member of the Conference Committee.

Q. During your term of office do you recall whether a resolution with reference to the Mississippi Choctaws was under consideration at any of these conferences between the conferees of the House and Senate at which you were present?

A. Now, as I stated, I am not sure whether it was a conference of the two committees or at a meeting of the Senate Committee, but I am rather inclined to believe it was a committee meeting, because I can't recall any member of the House being present.

Q. Were there any bills introduced in Congress relating to the affairs of the Mississippi Choctaws, or any amendments inserted in Indian appropriation bills relating to the same subject, which were referred to your office for consideration and report? A. All important bills and amendments relating to Indian affairs were generally sent to the office to be reported on. I can't recall particularly that this particular amendment was sent there, but I think it was. I know it was referred to me personally by Senator Platt.

Q. During your term of office the question of the rights of the Mississippi Choctaws was before Congress for consideration on many occasions, was it not? A. Yes, sir.

Q. Do you recall whether on these various occasions your office was consulted and requested to report on pending matters? A. It was consulted in an informal way several times. I do not know that any written request was made, as was customary, for a report on this particular proposition. There

may have been a formal request for a report, but I do not recall it. I do recall that Senator Platt called me in several times to discuss the matter.

Q. Of your own personal knowledge, aside from Senators Platt and Quay, do you know whether any other members of the Senate took an active interest in this claim of the Mississippi Choctaws? A. I cannot recall any particular person. Of course, the chairman of the committee was taking an interest in all matters coming before the committee, but as to any other Senator taking an active part, I do not recall that. Senator Platt at that time and Senator Quay were influential members of the committee, and whatever they suggested was generally adopted. At least, I always felt sure that whenever I recommended anything that was reasonable and got Senator Platt's approval, I generally succeeded in getting it enacted into law.

Q. During the time that you were Commissioner what was the attitude of the Dawes Commission towards the Mississippi Choctaws? A. Why, it was hostile, steadily so, so far as the Indian Office was concerned.

Q. In what ways did they evidence their hostility? A. They would come to me and discuss the matter and express their opinion that the Mississippi Choctaws had no rights and ought not to be enrolled, and that no attention ought to be paid to their claim. Judge McKennon especially was hostile, and I think Mr. Bixby also, both were at that time members of the Commission.

Q. Did that hostility continue during your entire term of office? A. I think it did.

Q. Do you recall an incident that occurred along about 1900 or 1901 with reference to the withdrawal by the Commission of what was known as the McKennon roll of the Mississippi Choctaws? A. In a general way, yes, I remember it.

Q. Please state it. A. Well, now, there must have been something before that because they were opposed—Judge McKennon, at least, was opposed to making a roll at all of these Indians. When the roll was made—I do not recall the date, but I know that Judge McKennon came to me personally and was there for an hour or two discussing the situation, and asked that the roll be withdrawn because of the fact that it was full of errors, and they did not think it should be retained in the office. That is my recollection of it.

Q. Do you recall what your position was at that time relative to the withdrawal of the roll? A. Yes, I told them I did not think it would be proper to withdraw any document of that kind unless the Secretary of the Interior gave his consent, and I refused at the time to do it.

Q. Were you in favor of the Secretary's giving his consent to the withdrawal? A. No, sir.

Mr. Anderson: That is objected to as immaterial and irrelevant.

MR. HALLINGER:

Q. Mr. Jones, do you recall when Mr. Field and Mr. Howe first approached you with reference to the claims of the Mississippi Choctaws, how extensive the claim was at that time, that is, as to what class of people they desired to secure property rights for? A. I do not remember the details. As I told you before, I was not aware that there were such people in existence as the Mississippi Choctaws, and what knowledge I had at the time was discovered from the discussion that we had at the office; that is, Mr. Howe, Mr. Field and myself. They represented that there were a great many of them and that they were in destitute circumstances, and the attitude of the white people in Mississippi was conflicting. Some of them wanted to get rid of them and others did not seem to care to have them removed.

Q. Did they support their favorable statements to you by documentary evidence? A. I think they did, although I cannot recall that documentary evidence. They brought in a great mass of matter, which I cannot recall now, bearing on the situation.

Q. What I desired to ascertain, if possible, was did they assert a claim in the first instance for any persons other than full bloods? A. I do not recall that question.

Q. Do you recall any conferences between yourself and members of the Senate Committee in 1902, when what is known as the supplemental agreement with the Choctaws was under consideration by Congress? A. Well, I can't remember any of those details. We had a great many conferences and I remember something about a supplemental agreement, but I can't recall—

Mr. Richardson: I suggest that the witness be permitted to examine the text of that agreement relating to the Mississippi Choctaws, preliminary to his answer.

MR. BALLINGER:

Q. Mr. Jones, I hand you a copy of the supplemental agreement of July 1, 1902, and call your attention to section 41 thereof, relative to the Mississippi Choctaws, and ask you to examine the same and state whether that will refresh your memory with reference to that legislation. (Handing document to witness.) A. I do not recall whether or not I had a conference with the committee as a whole, but I had a conference with Senator Platt in regard to this. I remember this agreement all right, the supplemental agreement, but I can't recall whether I had any conferences with the Senate Committee as a committee.

Q. I ask you now, also for the purpose of refreshing your memory, if you recall the attitude of the chairman of the Senate Committee, Senator Stewart, with reference to this particular provision in Act of 1902?

Mr. Anderson: The question is objected to because the chairman of the committee, Senator Stewart, is now dead.

A. I had some discussion with Senator Stewart in regard to the matter, and he was somewhat opposed to all of the Mississippi Choctaw agreement. He was not friendly to that agreement at all. There is no question about that in my mind.

MR. BALLINGER:

Q. I also want to ask you, Mr. Jones, if you recall who prepared the provision in this section relative to the full blood rule of evidence? A. No, I do not know who did that. I know it was discussed by Senator Platt and Senator Quay and myself, but who drew the draft of this I do not know. I do not know whether it was drawn in the office or not, but I know that the office acquiesced in it. I am inclined to think it was drawn in the office, but I could not swear to that.

Q. I now ask you if you recall visiting the Capitol with Mr. Field and seeing Senator Platt or any other Senators with reference to this particular provision? A. Yes, we called on Senator Platt and I think Senator Quay also.

Q. I now ask you whether or not it was on one of these visits that you refer to that Senator Quay displayed a little feeling with reference to the attitude of the chairman of the committee relative to this provision?

Mr. Anderson: I object to that as leading.

A. Yes, sir; it was.

MR. BALLINGER:

Q. State as nearly as you can recall just what the circumstances were concerning that particular conference? A. Well, I don't remember exactly whether this was proposed as an amendment or whether it had been changed, but evidently it had been left out of the bill, as I, and I think the office, suggested it be inserted. For some reason or other the bill had been changed, the chief item had been changed, and it didn't suit Senator Quay and he was considerably provoked about it, and I don't recall, but I think he went in and consulted Senator Platt and he became somewhat indignant, and I think they called on Senator Stewart and insisted that the item be inserted just as we had agreed on.

Q. And the provision you had agreed on was substantially as it appears in the statute? A. Yes, sir.

Mr. Anderson: That answer is objected to because the rough draft of the treaty will show the difference between the treaty as enacted and the agreement as proposed.

MR. BALLINGER:

Q. Do you recall, Mr. Jones, whether Mathew Stanley Quay was a member of the Senate during the entire time that you were Commissioner of Indian Affairs? A. I do not know whether he was Senator before I became Commissioner or not, but he was a member, as I recall it, all the time that I was Commissioner, unless he died while I was in office.

Q. Do you recall whether or not there was a temporary vacancy for a brief interval in Senator Quay's term?

Mr. Anderson: I object to that as leading.

A. No, I do not. My general recollection is that there was an interim there that he was not a member of the Senate.

MR. BALLINGER:

Q. Do you recall whether Senator Quay continued at all times his interest, whether there was an interval or not that he was not in the Senate? A. Yes, Senator Quay always showed a great deal of interest, not only in the Mississippi Choctaws, but in all Indians.

MR. BALLINGER:

Q. You have stated that the efforts of Walter Field and Chester Howe in behalf of the Mississippi Choctaw Indians commenced shortly after you became Commissioner of In-

dian Affairs, on May 4, 1897. Please state how long they continued to represent these people and urge their claims upon the Indian Office and upon Congress, to your personal knowledge? A. They continued right along until this provision was inserted in the bill. I do not remember whether this case was finished when I retired from office or not, but I know they kept up their work during all of that time.

Q. Up to the time you retired from the office of Commissioner of Indian Affairs? A. Yes, sir.

Q. Mr. Jones, please state of your own knowledge to whose efforts the recovery of the rights of the Mississippi Choctaws is directly attributable.

Mr. Anderson: That is objected to upon the ground that it is a mere matter of opinion on a question about which Mr. Jones' memory is rather hazy.

A. I can answer as far as the Indian Office and myself are concerned. There is no question about it that Mr. Field and Mr. Howe brought about all of the benefits that the Mississippi Choctaws received from whatever legislation was passed by Congress, and I believe that their efforts with the members of the Senate Committee were productive of practically all the legislation for the benefit of the Mississippi Choctaws. The last, of course, is only my opinion, but I am firmly of that opinion. As to the Indian Office and myself, it is not a matter of opinion; it is a statement of fact.

MR. BALLINGER:

Q. Mr. Jones, during a period while you were Commissioner of Indian Affairs was Walter S. Field under suspension by order of the Secretary? A. Yes, sir; he was.

Q. Please state whether or not during the period under which he was under suspension—state what treatment he was accorded at your hands and at the hands of the members of your office? A. He received the same treatment at my hands during the term of his suspension that he did before. I did not agree with the Secretary of the Interior in the matter of his suspension. I called on him and discussed the situation and told him that I did not think Mr. Field had been treated fairly, and while I have all the respect in the world for Secretary Hitchcock, he is one of the best men I ever met, absolutely honest, but he had a peculiar disposition. He was very suspicious of everybody. He is so very honest and conscientious himself that an insinuation on the part of anybody,

no matter who it was, as to the honesty of anybody practicing before the department received lodgment in his mind, and it was pretty hard to disabuse his mind of that impression. I was not successful in convincing him that Mr. Field had been treated unfairly, but I believed then and I believe now that he was treated unfairly.

Q. Then, do I understand that during the time Mr. Field was under suspension, and while you were Commissioner of Indian Affairs, that he was accorded the same privileges and same rights that he had theretofore been accorded as an attorney before your bureau? A. Yes, so far as I was personally concerned, and so far as I know in the office. I do not know whether he had the enmity of any of the clerks or not, but if he had I was not aware of it. He had access to the records, and I was always glad to give him any assistance I could within proper limits.

CROSS-EXAMINATION BY WILLIAM H. ROBESON.

Q. You have testified, Mr. Jones, that Mr. Field and Mr. Howe were very frequently in conference with you regarding the proposed legislation in behalf of the Mississippi Choctaws. It is true, is it not, that both of those gentlemen had a great deal of business other than that of the Mississippi Choctaws in the Indian Office at this time? A. Yes, sir.

Q. Did I correctly understand you to say that the contract presented to you for your approval by Messrs. Field and Howe purported to be a contract made with a body of Indians? A. That was my understanding of it at that time.

Q. Did you ever read the contract? A. I don't recall whether I did or not. I think I did, though. But if I had I would not have known anything about it because I was new in the Indian Office and had not become familiar with the practice of the Indian Office nor the character of contracts of that kind.

Q. You have testified to a request upon the part of the Dawes Commission, or some member of the Commission, for leave to withdraw what you and ourselves know here as the McKennon Roll, and that you denied their request? A. Yes, sir.

Q. Do you know when that roll was finally withdrawn? A. No, I do not. I do not know that it was ever withdrawn.

Q. Do you know that it was after the expiration of many years disapproved in toto by the Secretary of the Interior?

A. No, I have no recollection of the time that it was disapproved and as to the fact whether it was disapproved in toto or not. The only recollection that I have distinctly in regard to the withdrawal of the McKennon Roll was after Judge McKennon came in to the office and asked permission to withdraw it and I refused it. I called upon Secretary Hitchcock at that time and asked him what I should do. I had no authority to permit attorneys and commissioners to withdraw a document regularly filed, and he said I was absolutely right, but my recollection now is that he suggested that if there was a copy they could take a copy of it or that they should leave a copy in the office, I don't remember which, and I don't recall whether the roll was withdrawn or not.

Q. You have given much credit to Mr. Field and Mr. Howe for having appeared before you or conferred with you, or having appeared before the committee of one or the other houses of Congress in behalf of legislation which ultimately resulted to the benefit of a great many Mississippi Choctaws. Do you recall whether Robert L. Owen did not also appear on numerous occasions before you and have numerous conferences with you on the same subject? A. I have no recollection of that. Senator Owen used to come to the office very often on Indian matters, but I cannot recall that Senator Owen ever mentioned the Mississippi Choctaws.

Q. Mr. Jones, I do not wish to take advantage of your recollection. You deposed in a deposition filed October 4, 1910, in this case, on the first page thereof in answer to interrogatory 4, as follows:

"I do not know where I first heard the contention that those Choctaws residing in Mississippi were entitled to share in the lands of the tribe in Indian Territory, but I presume it was either called to my attention by either Walter S. Field, Chester Howe or Robert L. Owen, all three of whom were persistently urging the rights of those Indians and persisted in doing so for a long time."

That deposition was given in August, 1909. I will now ask you whether you had not a better recollection at that time of the incidence connected with this Choctaw legislation than you have now? A. Not as far as Robert L. Owen is concerned. I am not sure but that in conversation with Mr.

Owen in regard to Indian matters he incidentally brought up the Mississippi Choctaws, but I have no recollection whatever about his taking part in the interest of those Indians. We may have talked it over, but I have no recollection of it.

Q. When did you qualify as Commissioner of Indian Affairs? A. May 4, 1897.

Q. You have mentioned only Senators Platt and Quay as having interested themselves in the attempt to secure the legislation that was ultimately secured in a modified degree. Do you not recall that Senator Walthal and Senator Money of Mississippi were both active in their behalf? A. I don't remember. I can't recall now that either of those gentlemen ever called at my office. Neither do I recall that I ever passed the time of day with either one of them. I may have, but I have no recollection of it whatever.

Q. I had no reference to conferences with you, but rather to conferences with the committee or with members of the committee. Do you recall on any of the occasions when you conferred with the committee or its members that either Senator Walthal or Senator Money was present? A. No, I do not. Senator Walthal I did not know. I did not know him at all. I do not know that I would recognize him if I saw him on the street. Senator Money I would know. Neither do I remember that they were members of the committee, although they may have been, and I presume they were.

CROSS-EXAMINATION BY MR. RICHARDSON.

Q. Mr. Jones, when you arrived in Washington after your appointment as Commissioner of Indian Affairs in May, 1897, the first two things, practically, to greet you were Messrs. Howe and Field and the Mississippi Choctaw case? A. No, sir; it was not. When I came to Washington in 1897, on the 4th day of May, I took my grip and went on to Chicago and other points and was gone for about three months before I came back. I also visited New York to attend to what was called the lettings of contracts for the Indian Service. I did not get back here until, I think, some time in August afterwards. Then my greeting was just as you state.

Q. But Mr. Howe came first by himself? A. Yes, sir.

Q. Then Mr. Field and Mr. Howe called together?

Q. About how long after the time you returned to Washington in August was it that Mr. Field came in? A. Well, I couldn't tell you the exact date. Mr. Field came there the day I took possession of the office, in a friendly way, not in an official capacity to do any business, but simply on account of our former acquaintance, and when he came in connection with this matter it must have been in August or September, somewhere about that time.

Q. Did they tell you then that they represented the Mississippi Choctaws? A. Mr. Howe did. I don't recall, Mr. Richardson, whether he submitted this so-called contract or not, but I know he said he was interested in their case and was acting as their attorney. I did not know Mr. Howe; I had never seen him before. There was some talk on the part of some of the clerks in the office against him, and I did not pay much attention to him. I referred him, I think, to Major Larrabee, who at that time was chief of the Land Division, and to whom I generally referred such matters. Afterwards, when he brought Mr. Field there, we talked over the situation, and, as I stated before, the thing was not familiar to me. I did not understand anything about it; I did not know anything about Indian matters of any kind. We talked it over and I listened to Mr. Field's explanation of the situation, and, as I say, I didn't know anything about the legal phase of the matter until some time afterwards, and when the office told me that it did not think the Mississippi Choctaws were under our jurisdiction I had talked so long with Mr. Field about them that my personal sympathy was taken up with the character of those poor people and I wanted to help him personally and help the Indians if I could by having some resolution passed that would grant relief.

Q. Did it take your office any considerable length of time to arrive at the conclusion that the Department had no jurisdiction over these people? A. My recollection now is that it did not. I don't remember which one of the clerks, either Mr. Ward or Mr. Murchison, who was handling such matters. I can't tell you as to the month nor within three or four months, but I know they came to my room and told me that in their opinion the Indian Office had no jurisdiction and it was not worth while to consider it.

Q. Did Mr. Howe tell you what authority he had to speak for these people, or Mr. Field, at the time Mr. Howe and Mr. Field called upon you? A. I don't recall that. I think

they told me that they had a contract with some parties interested in it. As I stated, I don't recall whether they presented that particular contract, or so-called contract, at that time or not. They may have done so, but I don't recall it.

Q. Do you recall whether the paper that they presented to you was an executed or whether it was a proposed form of contract which they considered it advisable to enter into? A. I think, Mr. Richardson, that it was the completed contract, although at that time I did not know what a contract with the Indians was, but my recollection is that it was a contract that they or some one else had entered into with these Indians and in which they had an interest as attorneys.

Q. This was shortly after you had assumed the duties of Commissioner of Indian Affairs? A. That was my recollection of it.

Q. It was so shortly after that time that you had not become familiar with these contracts? A. No, sir. I was not familiar with them because of the short time I had been in office, and as you and others know, the Indian Office is largely a matter of tradition and treaty, and it took me a great many years before I became to any extent familiar with such matters.

Q. In your direct examination you stated that Mr. Howe was the one who referred to the contract, although Mr. Field was present and Mr. Howe told you that Mr. Field was interested with him in the contract. Is that correct? A. Yes, sir.

Q. Then Mr. Field's name did not appear in the contract? A. I don't think that I examined the contract sufficiently to know whether it did or not. All the knowledge or recollection that I have in the matter is what you have just stated as to the connection Mr. Field had with this case.

Q. Is it your recollection that at the time Mr. Howe and Mr. Field first came in company to your office that they presented a written contract to you? A. No, I couldn't state whether it was the first time or the second time. I have only a general recollection of the fact that there was a contract. Whether it was the first time or the second time I do not know; I don't remember.

Q. Is your recollection clear about the circumstances about the attempted withdrawal of the McKennon Roll? A. In a general way, yes, but I cannot recall the details.

Q. I believe you have stated that Captain McKennon spent several hours with you in that connection? A. Yes, sir.

Q. And you recommended to the Secretary that permission be not granted to withdraw that roll? A. Yes, sir.

Q. Do you remember when this was? A. Well, it was during the time that Judge McKennon was in Washington and talked the matter over informally with me. I do not think I had expressed myself in writing, but we discussed the situation personally, and I gave the Secretary my opinion that I did not think it was the proper thing to do.

Q. Do you know whether the Commission sought on two different occasions to withdraw the roll? A. No, I don't know whether there were two or three. They were somewhat persistent in their efforts to have the roll withdrawn, but whether it was one or two or three occasions I can't recall now.

Q. Do you know when Captain McKennon resigned as a member of the Dawes Commission? A. No, I don't recall.

Q. Do you recall the submission to Congress of the agreement which was known as a supplemental agreement and satisfied by the Act of March 1, 1902? A. Yes, sir.

Q. Was that submitted through your office? A. I can't recall that I was consulted personally, as I stated before, about it, but I think it was. I would not be sure as to that, however.

Q. Didn't the Interior Department recommend that that agreement be ratified in the form it had been prepared and signed by the Dawes Commission? A. I couldn't tell you that. The record ought to show it, but I don't recall.

Q. Do you know whether Mr. Hitchcock or whether some official in the Secretary's office having charge of Indian matters was called before the Senate Committee in connection with the ratification of this agreement? A. I don't know; I don't recall ever meeting him there.

Q. Were the relations between the Senate Committee and the Secretary's office at that time considered cordial? A. Not very, no. I don't want that to go in as an official statement, because that is my own opinion. I am sure, however, that the relations were not exactly cordial—that is, I know that the relations between the chairman of the committee and the Secretary were not cordial.

Q. I understood you to say that Senator Stewart, who in 1902 was chairman of the Senate Committee, was unfriendly to the provision for the relief of the Mississippi Choctaws?

A. Yes, sir.

Q. Do you by that statement mean that he was unfriendly to the provision as it was drafted in the original treaty or to the provision which now appears in the statute? A. Well, I can't remember that except that I got the impression—and I think I was right—that Senator Stewart was unfriendly to the whole proposition. He sometimes expressed himself, if you will recall, in rather a forcible way, and he told me one time that he thought the whole matter ought to be thrown out, that it had no merit whatever, referring to the Mississippi Choctaw matter. This expression was not made in the committee; it was personal between the Senator and myself in our discussion of the matter.

Q. Do you recall whether or not Mr. Field and Mr. Howe were at the time these hearings were held in the Senate Committee, which resulted in the passage of the Act of July 1, 1902, were seeking to amend the original agreement or to secure its adoption? A. My recollection is that they were trying to secure its adoption.

Q. Do you know whether or not the original agreement was amended in any material particulars? A. I think it was. That is my recollection.

Q. Do you know who advocated these amendments? A. Senator Quay and Senator Platt. They advocated the original agreement, but the agreement was changed somewhere and it was not discovered until the very last moment that the change had been made, and I think, as I said before, that Senator Quay became very indignant and I believe he called on Senator Platt and insisted that the original provision be inserted in the bill. My recollection further is that Senator Platt insisted on this going in just as it was.

Q. Is it your personal recollection that this text of the original agreement was followed, or whether it was amended by that statute? A. Which statute?

Q. The act before you, July 1, 1902? A. My recollection is that the original agreement was substantially just as it is here, although I have no recollection. I have no copies of the original agreement, but I think substantially it was just as it is here. That is my recollection.

Q. Do you recall the fact that while you were Commissioner there were a great many applications pending in your office known as the Mississippi Choctaw application for citizenship? A. Yes, sir; there were.

Q. Do you recall what, in a general way, disposition was made of these applications and the proofs which had been taken in support of them up to the time of this act of July 1, 1902? A. No, I don't remember. There is no use in my trying to explain that because my recollection is quite hazy on that matter and I don't remember what the rules were.

Q. Was it not a fact that of all the applications which had been acted on at that time, substantially every one had been rejected? A. Practically all of them, I think, almost without exception.

Q. To refresh your recollection I will ask you if you don't recall it to be true that only five out of several thousand individuals had been ordered to be enrolled? A. As to the number I don't recall, but I know that practically all of them were rejected.

Q. Was it not a fact that those claimants had been rejected because it was extremely difficult if not practically impossible for these people to prove after more than 70 years that their ancestors had complied with the requirements of article 14 of the treaty of 1830? A. I think that is true. It is true in this case, as in every other Indian case. An Indian cannot prove but very little, if anything, especially after such a long lapse of time, and being scattered so, and I think it was the lack of proof as much as anything else.

Q. Wasn't this situation peculiarly true of the full blood Indians? A. Yes, sir; the full blooded Indian in this case, as in all other cases, is practically helpless. Some one must take up his case or he will lose all of his rights.

Q. You remained Commissioner for several years after the passage of this act of July 1, 1902, during which time the enrollment of the Mississippi Choctaws and the action of the office upon the various applications for enrollment was continued. Was this situation with respect to proof changed by your office except by the provisions of section 41 of the act of July 1, 1902? A. Well, I don't recall the transaction after that. To be frank with you, after this act was passed

I thought that the adjustment was simply a matter of routine, and I did not take much interest in it. I was very much interested in getting this passed, and I thought by this act the Indians had been protected and that the matter of proof, the routine matter of enrollment, was left largely to outside matters. I presume that my attention was called to certain phases of it, but I did not take a great deal of interest in it because I thought my work was done so far as they were concerned, and I don't now recall any of the details.

Q. Are you familiar with the legislation which had preceded this act with reference to the Mississippi Choctaws?

A. No, sir; I am not. I don't remember that.

Q. Do you recall the provision of the Curtis Act, which directed the Commission to identify the Mississippi Choctaws? A. I remember the Curtis Act, yes.

Q. That was the provision under which Captain McKennon prepared what is known as the McKennon roll of March 10, 1899? A. Yes, sir.

Q. Are you familiar with the provision of the act of May 31, 1900, which directs that any Mississippi Choctaw identified as such by the Dawes Commission may at any time before the final closing of the rolls remove to the Choctaw-Chickasaw Nation and acquire the rights of citizenship? A. Yes, I remember that there was some provision of that kind in the act.

Q. So that prior to the act of July 1, 1902, the Mississippi Choctaws had a forum for the determination of their identity, and had a law under which they might remove at any time before the final closing of the rolls and acquire their Choctaw citizenship, and were only prevented from succeeding in establishing their rights by these decisions on the question of proof of their heirship and the status of their ancestry, which made it practically impossible for them to secure relief. Isn't that a fact? A. I think it is. That is my recollection of it.

Mr. Anderson: That is objected to because the witness is requested to give an opinion upon a question of law, which, if proper, should be before the court.

Mr. RICHARDSON:

Q. Then, Mr. Jones, referring again to section 41 of the act of July 1, 1902, I will ask you whether or not there is

any provision in that section beneficial to the Mississippi Choctaws except the provision which gives to full bloods the right to establish their status as descendants of 14th Article claimants by mere proof that they are full bloods and that their ancestors lived in Mississippi? A. I do not think there is any other provision. I think, as you stated, that this established a forum where they could establish their identity and file proofs, but it doesn't give them any help as far as I can see.

Q. Mr. Jones, I referred in my second preceding question to the fact that the Curtis Act established a forum for their adjudication of their claims, that the act of May 31, 1900, gave them the rights of Choctaw citizenship conditional upon their removal and having been identified under the Curtis Act. Now what I meant by my last question was to ask you whether any part of this section 41 conferred a benefit upon the Mississippi Choctaws and gave them anything that they did not already have, except the portion of which I will now read:

"and in the disposition of such applications of full blood Mississippi Choctaw Indians * * * shall be deemed to be Mississippi Choctaws entitled to benefits under article 14 of the said treaty of September 27, 1830, and identification as such by said Commission, but this direction or provision shall be deemed to be only a rule of evidence and shall not be invoked by or appear to the advantage of any applicant who is not a Mississippi Choctaw of the full blood," etc., which is known as the full-blood rule of evidence?

Mr. Anderson: That is objected to as asking for the opinion of the witness on a question of law.

A. No, sir; in my opinion, it did not.

Mr. Anderson: That is objected to, as the witness is not an expert in law.

MR. RICHARDSON:

Q. State, then, whether or not it is your recollection that the fight which was made in connection with the securing of the passage of this act of July 1, 1902, centered on that particular part of the agreement?

Mr. Anderson: That is objected to as leading.

A. My recollection is that it was.

MR. RICHARDSON:

Q. Now will you further state whether or not, in your recollection, there was any such provision as that originally submitted by the Secretary to Congress by ratification? A. I don't recall whether it was or not. It is so long ago that I don't remember.

Q. Do you recall what was the attitude of the Choctaw Nation with respect to that provision? A. No, I don't remember. I know that the representatives of the Choctaw Nation wanted to get everything they could.

Q. For the Mississippi Choctaws, you mean? A. Yes, sir. That is, the attorneys for the Mississippi Choctaws.

Q. I am speaking of the attorneys for the Choctaw Nation, who were Mansfield, MacMurray and Cornish? A. I don't remember what their attitude was.

Q. Did they go to you about this proposition at all? A. I think Mr. MacMurray did several times, but as to what the conversation was, I don't remember. They visited my office a number of times, but generally on other matters.

Q. Do you recall whether any members of the Dawes Commission were in Washington at the time of the hearings on this act? A. I think they were.

Q. Do you recall whether they were advocating this full-blood amendment? A. No, I don't remember. The only thing I do recall is that they were opposed to considering anything favorable to the Mississippi Choctaws, but I don't remember what their attitude was in regard to this.

Q. Well, isn't that the only thing in that act which is favorable to the Mississippi Choctaws? A. It seems to me that is the only thing. Judge McKennon is the only man who discussed the situation with me thoroughly. Mr. Bixby was here a good deal, but he and I disagreed right on the start as to the rights of the Mississippi Choctaws, and we agreed to disagree, so he didn't bother me, but he spent a great deal of time before the committee of Congress and I know he was hostile to the Mississippi Choctaws.

Q. Didn't both Bixby and MacMurray devote more of their time and attention to the Secretary's office than to your office? A. Yes, Mr. Bixby seldom came there after we had this disagreement. Mr. MacMurray and I were always friendly enough, but he spent most of the time in the Indian Department of the Secretary's office. Judge Van Devanter

and Mr. Bender, as I recall now, were in the Indian division of the Secretary's office and he spent most of his time there.
Mr. Richardson: That is all I have.

CROSS-EXAMINATION BY W. W. WRIGHT.

Q. It has been testified to in the record that while the treaty of July 1, 1902, was under consideration by the committee of Congress having that legislation in charge that Chester Howe appeared before one or more of those committees and submitted oral arguments in support of an amendment in behalf of the Mississippi Choctaws. Do you have any personal knowledge of Mr. Howe's appearance before either of those committees at the time the act of July 1, 1902, was under consideration? A. No, I have not. As a matter of fact, I have no recollection of being in the committee of the House when this matter was discussed in any of its phases. My activities, if you can call them such, were entirely in the Senate Committee. Mr. Howe may have been there, but I have no recollection of it.

Mr. Wright: That is all.

CROSS-EXAMINATION BY GEORGE M. ANDERSON.

Q. When did you say Chester Howe first came to you about the rights of the Mississippi Choctaws? A. I think it was in the fall of 1897.

Q. Of course you didn't examine any papers he had on that matter because you knew you had no jurisdiction over the Mississippi Choctaws. Isn't that right? A. No, I didn't know at that time whether we had or not. I didn't know anything about the case. He may have submitted some documents, but I have no recollection of it.

Q. Now, as a matter of fact, Mr. Jones, Chester Howe, in a petition which he prepared just before his death and swore to and sent to me, and which is on file in this case now, states that he first heard of the Mississippi Choctaw matters during the discussion of the act of 1898, and that he never took any active part in Mississippi Choctaw matters until he heard that Captain McKennon had made a roll of them in 1898,

and then it seems he got busy. That is what he said himself. You didn't know he had made such a statement as that, did you?

Mr. Ballinger: Before the witness answers, I want to note an objection. I object to this question because it is not a question, but a statement as to something that Chester Howe has said, about which this witness is not asked as to his personal knowledge of what Chester Howe has said, but as to his personal knowledge of the correctness of the statement.

Mr. Anderson: I asked him before if he knew anything about this statement.

Mr. Ballinger: I object to that because you can ask this witness here if he knows as a matter of fact if that was the case, but you cannot ask him whether he knows whether or not Chester Howe made such a statement.

A. No.

By MR. ANDERSON:

Q. You had never seen his petition before you testified?

A. No, sir.

Q. Did you know that two witnesses have testified in this case, W. H. Arnold and James E. Arnold, to the fact that Chester Howe had never met M. M. Lindly, with whom it is alleged the band contract was made? You never knew that, did you? A. I did not know, neither have I heard of any statement of testimony made by any witness connected with this case, directly or indirectly, except my own.

MR. ANDERSON:

Q. Mr. Jones, did you ever read the recommendation of the Dawes Commission in the report dated March 10, 1899, upon the McKennon Roll, which was prepared, by the way, by Captain McKennon, in which it was stated that the only fair way to enroll the Mississippi Choctaws was to accept those who were of the full blood without further examination as to ancestry? A. I presume that I did, but I have no recollection of it.

Q. Did you know or have you ever heard that that provision which was practically inserted in the supplemental Choctaw agreement of July 1, 1902, was placed there by Assistant Attorney General Van Devanter?

MR. ANDERSON:

Q. Did you know anything about that fact? A. No, I did not.

Q. What were the rights of the Mississippi Choctaws, as you understand them, which were presented to you by Mr. Howe and Mr. Field? A. I cannot go back into the details of that matter, Mr. Anderson, because it is so long ago and is so mixed up with other matters that I don't believe I am able to discuss it with you intelligently.

Q. Now, I believe you have stated that you were Commissioner of Indian Affairs from some time in March, 1897? A. No; May, 1897.

Q. From some time in May, 1897, to the 1st of January, 1905? A. Yes, sir.

Q. During that time Mr. Walter S. Field was quite active in the Osage Indian affairs, was he not? A. Yes, sir.

Q. Did you know anything about the contract that he made with Wesley M. Dial in 1897 and 1898, by which he was to procure tentative allotments of Osage lands? A. I have no recollection of that contract.

Q. Did Mr. Walter S. Field ever come to you in 1902 or 1903 to ask for an order allowing the Osage Indians to take tentative homesteads on what is known as the Osage Pasture Lands, which had been leased to cattlemen? A. As to the details of that I do not remember. I know that Mr. Field did mention the matter to me, but I do not know that there was any action taken. Neither do I recall that there was anything done about it. I think, though, that there was some tentative allotment made on the pasture lands, but I don't remember whether Mr. Field was active in that or not.

Q. As a matter of fact, wasn't an order issued by you allowing these allotments to be taken in those lands leased for pasture? A. I think there was something of that kind, but I cannot recall it now. It is only a general impression I have.

Q. Do you know anything about a contract that was entered into by Wesley Dial and Baker and Prudon, by which Mr. Field was to obtain homestead allotments in the leased pasture lands, and for which he received \$2,500 in cash from those people? A. There may have been such a contract, but I have no recollection of it. The only name that I remember in connection with the matter is Dial. I don't know that I ever met Dial, but I remember the name, although I don't remember in what connection.

Q. Did you know that it was afterwards charged that Mr. Field obtained these homestead allotments for perhaps 200 Osage Indians who afterwards gave leases to him?

Mr. McCurtin: I want the record to show that I do not appear here at this time as attorney for the Mississippi Choctaws, but I appear only on account of the principal chief of the Choctaw Nation, having been served in the original Mississippi Choctaw suit.

MR. ANDERSON:

Q. You have never been employed by the Mississippi Choctaws? A. No, sir; I never have.

Q. Did you know that Dial, Baker and Prudon paid \$25 for each homestead they secured? A. I have no recollection of any such arrangement, Mr. Anderson. That is not stating that there was not one.

Q. And that these men afterwards went to the cattlemen and compelled them to give up large sums of money? A. I don't know anything about that.

Q. It was because of these charges against Mr. Field that his disbarment proceedings were brought, was it not? A. I can't agree with that at all. I think it was on account of the personal prejudice of Mr. Hitchcock.

Q. Against Mr. Field? A. Yes, sir.

Mr. Ballinger: To what do you refer, to the suspension? There was no disbarment.

Mr. Anderson: It is the disbarment proceedings I am talking about.

Q. Did you ever hear that Mr. Walter S. Field was doing business with the Indian Office upon the strength of alleged influence with you at the Indian Office? A. I never heard of it. If I had I should have denied it.

Q. Did Mr. O. A. Mitscher ever come to see you in 1902 or 1903 with regard to getting an order allowing tentative homesteads to be taken in the lands leased to cattlemen for pasture?

Q. Do you know who O. A. Mitscher was? A. Oh, yes; he was the agent at one time in the Osage Reservation.

Q. During what time, do you know? A. No, I don't remember the years. I think he followed Pollock there.

Q. Do you know why Mitscher was afterwards dismissed from the service? A. No, I don't remember whether he resigned or whether he was removed.

Mr. Anderson: The record will be filed. I want to connect his testimony with something I am going to file hereafter.

Q. Do you remember Mr. Walter S. Field coming to you on or about January 10, 1903, and asking you to order Agent Mitscher to keep back the money of the children of Green Yergen until they were 21 years of age? A. No, sir; I don't even remember the name.

Q. You didn't know, of course, that Mr. Field had been paid \$500 for that? A. No, sir; I knew nothing of that—that is, I don't remember it now. I may have known something about it at that time.

MR. ANDERSON:

Q. And afterwards received \$400 more, making in all \$900? A. I have no recollection of it at all.

MR. ANDERSON:

Q. Did you know that Agent Mitscher and Mr. Field were brothers-in-law? A. No, sir; I did not. I knew they were neighbors in Wisconsin, but I did not know that they were related directly or indirectly.

Mr. Ballinger: It is understood and agreed that all the questions now and hereafter to be asked on this and kindred subjects are subject to the objection of counsel for Walter S. Field, and that the notice heretofore given that the court will be asked to assess the costs against the Government applies to all this testimony.

A. I might say that I do not know now that they are brothers-in-law or ever were brothers-in-law. I never knew Mr. Mitscher until I came to the Indian Office.

Mr. Field: And they are not brothers-in-law.

MR. ANDERSON:

Q. Do you know whether they are any relation at all? A. No, sir.

Q. You say you knew they came from the same place in Wisconsin? A. Yes, not far from where I lived, but I don't recall of ever hearing of or meeting Mr. Mitscher until he came here to the office.

Q. Was it ever called to your attention while you were Commissioner of Indian Affairs that Dial, Baker and Prudon got leases from the Indians of their tentative homesteads at \$25.00 a piece, and had those leases approved by Agent Mitscher and then had them located where the water supplies

of the pastures were, and then went to the cattlemen and threatened to fence them off from the water if they did not pay them large sums of money? Was that ever brought to your attention? A. I don't remember the details connected with that transaction. I remember, in a general way, Mr. Anderson, that there was something of that kind. I remember also making up my mind that the Indians were entitled to do just what they did. I believed so then and I believe so now. They had vested rights in that reservation, and if they wanted to take out allotments they had a perfect right to do so. I don't remember anything about Mr. Field's interest in the matter, however.

Q. Do you remember whether it was through your office that Agent Mitscher was directed to collect the money from the cattlemen who leased these pastures and deduct therefrom the amount that would have been paid for the leases of Dial, Baker and Prudon, and the money for such homestead leases was paid over to said Dial, Baker and Prudon, instead of being turned over to the credit of the Osage Nation? A. I have no recollection of the particular transaction, as I stated before, but if they did it I believe it was right. I believe so now. If those Indians had taken out their allotments they were entitled to whatever revenue they could produce out of the allotment, and whether it was the cattlemen or any one else opposed to them.

Q. But didn't the Nation suffer by the payment of these tentative homestead allotments to Dial and others? A. If Dial and others had the right to take up their allotments they had the right to the revenue, and no one had any right to object.

Q. As a matter of fact, didn't the Osage Nation hold its land in common as tribal property and these tentative homesteads were afterwards held to be void? A. I don't think they were. I don't recall it.

Q. By your office? A. At that time the Osage Indians, the members of the Osage Tribe, had taken individually large tracts of land. There were two or three of them, I have forgotten their names—two brothers, Jim and Peter—took up large tracts of land and operated them themselves, either put their own cattle on or leased them to the cattlemen, and if tentative allotments were made to the others they were certainly put on the same basis with other members of the tribe in order to conduct their business. Some of them were more

intelligent than others, and, naturally, took advantage of their knowledge of the land and got what they could out of the allotments when they secured them. I don't think I had any knowledge that anybody outside of the members of the tribe having benefited by these allotments.

Q. There was no provision of law that you know of for the allotment of Osage lands in severalty, was there? A. No, sir; but a great deal of the transactions of the Indian Office were conducted outside of any particular legislation. It was a matter of tradition and matter of tribal agreement and policy in many cases.

Q. Mr. George A. Ward has testified (June, 1911, page 20 of the printed record) that after a man has been suspended from practice before the Interior Department he cannot transact any business or receive any information from that department. Is that true? A. I do not recall. I recall in Mr. Field's case that I told the Secretary distinctly that as far as I was concerned I was going to give Mr. Field what information I could legitimately, and I asked the clerks there to do the same. I thought he had not been treated right, and did not think it was the proper thing for me to do to cut a man off from the privileges of the office when I could not see that he had done anything that merited such treatment. We had some words about that, but I told him distinctly that I would resign first; that until he could show me that Mr. Field had done something illegal or morally wrong I would give him all the information I could.

Q. Did you ever examine the disbarment proceedings against Mr. Field? A. Only in an informal manner, but I remember at that time the general character of the accusations made against him, and I do not believe they were true.

Q. Mr. Field acknowledged himself that he had this contract with Dial, Baker and Prudon, didn't he? A. I don't remember that Mr. Field ever told me he had such a contract. I presume that the papers were there, and I remember that I talked the whole situation over with Judge Van Devanter, and I was not convinced that there was any merit in the case.

Mr. Ballinger: Do you mean merit in the case or merit in the charges?

A. In the charges, no. I do not pretend to put myself up against an attorney on legal points, but I exercised what little common sense I had, as a matter of fair play, and I think I was right.

MR. RICHARDSON:

Q. You knew that Mr. Field had collected large sums of money from these men whom I have named for procuring these leases from the Indians who had tentative allotments, didn't you? A. I presume that I knew, if that was the amount you speak of, \$25.

Q. \$2,500? A. I didn't know anything about that.

Q. That he collected large sums, as much as \$1,700? A. No. I remember he did collect something from these individual allotments for the purpose of transacting their legal business for them. I thought that was legitimate and I think so now.

Q. Was it your knowledge that he collected \$50 apiece from each individual for whom he procured homestead allotments? A. I thought it was \$25. Perhaps it might have been \$50.

Q. But those other large sums obtained from individuals, you don't know about them? A. No, sir; I don't know anything about them.

Q. In your examination this morning you have stated that in your opinion practically all the work done in this case for the Mississippi Choctaws in establishing their rights was done by Messrs. Howe and Field. In your examination of August 11, 1909, as you had spoken of Mr. Howe as having taken somewhat the lead in the case, I asked you: "Did you find that Chester Howe was of any particular advantage in urging the passage of legislation?" You answered: "He was active enough, but whether it was effective or not I don't know." A. That's what I say now. As far as I am personally concerned, and as far as I know, in the Indian Office and also in the Senate Committee, Mr. Field and Mr. Howe did all of the work with which I was acquainted. And I want to state further that as far as this case is concerned the Mississippi Choctaws would be in the same condition today that they were twenty years ago if it were not for the efforts of these men with the Senate Committee and Senator Platt and Senator Quay.

Q. How early, in your opinion, did Senator Quay begin to take an interest in these Mississippi Choctaw matters? A. I can't remember the year.

Q. How soon after you entered upon the duties of your office? A. It was the same year. The first time I saw Sena-

tor Quay, the first time I met him, was when Mr. Field—I don't remember whether Mr. Howe was with him or not—Mr. Field brought him to my office about this matter.

Q. How long was that after you became Commissioner?

A. A year or two years, I don't remember exactly. It was some little time after.

Q. How long was it until you saw Senator Platt? A. I used to see Senator Platt once a week and sometimes oftener. I used to rely on Senator Platt as my adviser in Indian matters. He used to call at my office and I would go to his office very often.

Q. As you understood it, was it not the duty of the Indian Office to urge upon Congress all legislation necessary to give the Indians their rights guaranteed by treaties? A. Theoretically that is true, but if you know about the conduct of the Indian Office and also Congress, you know the Indians would be today without any rights or any relief unless some one had made it a personal matter. Congress will not act on practically any matter connected with the Indians unless somebody makes a special effort to call their attention to it. That is true almost without exception, and the Indians Office is the same way, more or less. Unless somebody follows up the case in the Indian Office and in the Secretary's office the Indian will be without any relief.

Q. Now will you please point me out some records of the Indian Office which will show the efforts which you speak of in establishing the rights of the Mississippi Choctaws? A. One thing that I can tell you—I can't recall the date or anything like that, but the efforts that I have already stated, the efforts of Mr. Field and Mr. Howe with the two Senators mentioned, and also in the committee.

Q. Is there anything on record in the office that shows any action you took? A. I don't know that there is. Mostly it was personal work.

Q. Personal talks? A. Yes, and I found it was generally more effective. You could recommend until doomsday, but unless you followed it up with personal solicitations you would get no action on it. It was the same then as it is now, and I don't blame the Indians for employing attorneys. I think they are entitled to, and unless they do they won't get relief and they won't get their rights. That is recognized in Congress now, and especially in the House Committee.

RE-DIRECT EXAMINATION BY MR. BALLINGER.

Q. In answer to a question asked you by Mr. Richardson you made the following statement, in part: "Mr. Howe did. I don't recall, Mr. Richardson, whether he submitted this so-called contract or not." I ask you now to what time did you then refer? A. I don't remember whether it was the first time that Mr. Howe called or whether it was a subsequent call. I think the first time he called he simply came in to pay his respects.

Q. Mr. Howe did then, as a matter of fact, submit a contract with either a band or a number of Indians to you at that time or at some time immediately subsequent thereto? A. Yes, sir. I may add also that I don't think I looked over the contract because, as I stated, I was not familiar with Indian contracts or the procedure of the Indian Office. I think I inspected the contract and probably submitted it to some of the clerks in the office, but I can't locate the exact time.

Q. Was that subsequent to your trip to McAlester or before that? A. I don't recall the year I was down to McAlester, but I think it was before that. I think I went down to McAlester in the winter time—I know I did, because I remember the Secretary wanted me to go down there to look over the prisons that they had for Indians, with the object of asking Congress to make an appropriation for the purpose of building prisons, and when I came back Congress was in session, and I called on Representative Cannon, who was at that time chairman of the Committee on Appropriations, and urged that an appropriation be made for the purpose of putting up these buildings. That is why I recall that it was in the winter time. It may have been in the winter of 1898-99, but I can't recall exactly.

Q. When Mr. Howe left this contract with you, did you submit it to some member of your department for an opinion? A. Yes, to some clerk. That was the time I was told that the Mississippi Choctaws were not under the jurisdiction of the Indian Office.

Q. You mean you were told that by a clerk in the law division? A. Yes. I have forgotten which one it was.

Q. What were your personal relations with the members of the Senate Committee on Indian Affairs in the year 1902? Were they cordial? A. Yes, unusually so—on my part, at least, and I had no reason to think the contrary on their side.

Q. You spoke about the "original agreement" of 1892 and its enactment into law substantially as originally agreed upon. I call your attention to the fact that the original agreement was a paper or agreement prepared in the Indian Territory by the Commission and subsequently transmitted to the Department, and I now ask you if when you referred to the "original agreement" you referred to some provision in an agreement drafted by this Commission in Indian Territory and subsequently transmitted to the Department? A. Yes, I think that is true. I think the original agreement was prepared by the Commission.

Q. Now, then, did this provision for the benefit of the Mississippi Choctaws appear in that original agreement? A. I can't recall that. I don't remember, but I don't think it did.

Q. For the purpose of refreshing your memory, do you not recall that it was over the provision that they had included, and which attorneys, including Howe and Field, deemed insufficient to protect the rights of the Mississippi Choctaw Indians, that the controversy in the Department and the Capitol arose?

Mr. Anderson: I object to that as leading, outrageously so.

A. The only recollection I have is that the Indian Office objected to the agreement as sent up by the Commission. Whether it was at the suggestion of Mr. Howe or Mr. Field, or whether it was on their own initiative I don't remember.

By MR. BALLINGER:

Q. I will ask you, Mr. Jones, as to what the custom was with reference to amendments or recommendations transmitted by the Department to Congress, where the first draft originated, to whom it was transmitted and through what hands it passed prior to its submission to Congress.

Mr. Richardson: I want to reserve an objection to that question. We object to any parole testimony as to matters which are of record and having already been filed in this case.

A. The process while I was in office was that we prepared the legislation or whatever recommendations we wanted to make to Congress and sent them over to the Secretary's office for his approval or disapproval and any suggestion that he might make, and he then would send them up to Congress. The committee, at least of the House, sent down to me personally several times and wanted me to send recommendations there to them on certain matters, which I could not do.

I would have liked to have done it, but the rules of the Department were such that I was required to send all recommendations to Congress through the Secretary's office, which I think was proper.

Q. Then where your office had a personal interest in the matter, did you usually follow that up by other communications or by personal visits? A. By personal visit. As a matter of fact, there was considerable friction between the Indian Bureau and the Indian Division in the Secretary's office. If I recommended anything special and I found out that the Indian Division were not favorable to it I generally carried it over myself in person to the Secretary and explained it to him before the Indian Division got hold of it so as to prejudice the mind of the Secretary. As a matter of fact—and it was proper—the Secretary relied on the Indian Division of the Department and not so much on the Indian Office, although invariably in my case the Secretary would always call me over if he found that the recommendation of the Indian Office ran contrary to the recommendation of the Indian Division, and we would discuss it personally, and I don't recall but once or twice the Secretary going contrary to the recommendation of the Indian Office when I called on him personally to explain the situation.

Mr. Anderson: This answer is objected to as being irrelevant and immaterial.

A. I might add also that if Judge Van Devanter objected to some legal feature of the recommendation that we made or the bill that we proposed, he invariably called me over, and sometimes I would take a clerk in the Law Department over with me and we would discuss it informally. If he made the changes that he wanted to he would always send it back to the Indian Office for the purpose of having it put into shape. That was the universal practice. I don't remember a single instance but what that was carried out.

By MR. BALLINGER:

Q. Do you recall the circumstances of the retirement of Commissioner McKennon? A. No, I do not. I may have known about it at the time, but I don't recall it now.

Q. For the purpose of refreshing your recollection, do you recall any arrangements that Mr. McKennon had made with the firm of Mansfield, McMurray and Cornish to become a

member of the firm in the representation of the Choctaw and Chickasaw tribes? A. I have heard of that, but I don't know that it is true.

Mr. Anderson: That is objected to as leading.

By MR. BALLINGER:

Q. Did you notice any change in Mr. McKennon's attitude toward the Mississippi Choctaw Indians after about December, 1909? A. No, I don't remember about that, Mr. Ballinger. The only thing I do recall is that as far as the intercourse with the Indian Office and with me personally is concerned he was not friendly to the Mississippi Choctaws.

Q. Mr. McKennon, who was chairman of the Commission, was succeeded by Mr. Bixby, was he not, as chairman? A. My recollection is that Mr. Bixby was chairman while Mr. McKennon was a member. I may be mistaken, but I think that is true.

Q. Mr. Jones, reference has been made to the report of the Dawes Commission, submitted under date of March 10, 1899, containing what was known as the McKennon roll of Choctaws. I will call your attention to the following language, which appears in that report, and which appears on pages 837 and 838 of the brief filed by Ralton, Siddons & Richardson in the now pending case. The Commission says:

"The full blood Choctaw people, who have for nearly three-quarters of a century continued to reside in Mississippi as recognized citizens of that State, speaking the Choctaw language as fluently as did their fathers, who have acquired only such knowledge of the English language as enables them to transact ordinary business with the white people of the country, cannot now, therefore, reasonably be required to show the purposes of their ancestors by stronger proof that the facts of such residence and such recognition as citizens of the States, and the further fact that they are rescinded from the Choctaws living there at the date of said treaty.

"The Commission, therefore, finding it impossible to trace the full blood Choctaw now residing in the State of Mississippi, bearing an English name, with any degree of certainty to his ancestors bearing Indian names, and to establish the fact that such ancestors performed the duty of signifying to the United States agent within the limited period their intention and desire to remain and

become citizens of the States, has believed it to be its duty to report the names of all full blood Choctaw Indians who might appear before it in said State for identification as Mississippi Choctaws, and it accordingly makes such report, having taken the names and identification of each of such persons and prepared a schedule of them from the data obtained by the Commission recently within said State, which schedule accompanies this report as a part hereof."

I now ask you whether that position taken by the Commission in March, 1899, namely, that the full blood Indians were deemed 14th Article Mississippi Choctaws, was thereafter changed, that is, that their attitude was thereafter changed with reference to the enrollment of full blood Mississippi Choctaws?

Mr. Anderson: That question is objected to, first for referring to the brief as containing the report of the Commission of March 10, 1899, when the same had been set out in the record and appended to the deposition of ex-Commissioner McKennon. Second, because the question calls for the opinion of the witness on matters which should be shown, if at all, by the record.

A. I am not sure that I have the gist of your question, Mr. Ballinger, but my recollection of that report and also the attitude of the Commission, as I stated before noon, was hostile to the Mississippi Choctaws, and when they were ordered or directed by the Department to make up this roll they made it up on what is called the full blood basis; that is, they would enroll any of these Indians that were full bloods. I don't know that they had at that time any rule except the appearance of the Indian or whatever traditions they might secure in making the roll. The fact that when they asked that this roll be withdrawn—it must have been after that, but I have forgotten the exact time—they went to work and made out another roll and discredited the qualifications that they had established in the original roll, and I think they established a rule requiring the Indians to prove their rights under the treaty; that is, that they must prove whether they were full bloods or not.

MR. BALLINGER:

Q. That is, they must prove that they were descendants of persons who were beneficiaries under the 14th Article? A.

Yes, that is my recollection of it. While, in a way, that might be all right, still, they had gone back on their own record in the original roll, and it got to be somewhat mixed. I have forgotten the exact details, but I know that was the gist of the matter at that time. Then an item in the appropriation bill in 1902 provided that the Indians could prove—I have forgotten just what the rules were, but they could prove, anyway, that they were entitled to benefit under the act.

Q. The act of 1902 provided that any person who was a full blood Indian should be deemed to be a descendant of a 14th Article claimant? A. Yes, sir.

Mr. Anderson: We object to Mr. Ballinger testifying for the witness, and ask that his answer may be stricken out.

A. It is a little bit hazy in my mind, but that is my recollection of it, that the rule of evidence was changed from that of the original order when they were compelled or required to make another roll.

Mr. Ballinger: Now, Mr. Jones, at the time the report containing the roll, and which report was dated March 10, 1899, was submitted to your office, there was then no authority of law for the enrollment of any Mississippi Choctaws, was there? A. I don't recall that there was.

Mr. Anderson: That is objected to because it is a matter of law.

MR. BALLINGER:

Q. Now, after the roll was submitted, the act of May 31st, 1900, 31 Stat. 236, was passed, which contained the following provision:

"That Mississippi Choctaws duly identified as such by the Commission to the Five Civilized Tribes shall have the right at any time prior to the final approval of the rolls of the Choctaw-Chickasaw Nations by the Department to make settlement within the Choctaw-Chickasaw country, and on proof of the fact of bona fide settlement may be enrolled by the United States Commission and by the Secretary of the Interior as Choctaws entitled to allotment."

Now, was it after or before the enactment of the act of May 31st, 1900, that the Commission requested permission to withdraw the rolls submitted March 10, 1899? A. I think it was after that. I know that Judge McKennon came to

my office one time and asked that they be permitted to withdraw this roll; that they could reduce the number by hundreds at that time, and he thought it was only fair that they should be permitted to withdraw that roll and make a new one.

Q. Did Mr. McKennon or Mr. Bixby or any other members of the Commission at about this time advise you that it was their intention to reduce the rolls of membership of the Choctaws and Chickasaws by about 5,000 persons?

Mr. Anderson: The question is objected to as leading.

A. I don't remember the particular figures, but it was a very large number. He said it could and ought to be reduced, but I don't remember the exact number. That was Judge McKennon, not Mr. Bixby. Mr. Bixby, after he and I had the first tilt, did not come to the office at all. All this transaction was between Judge McKennon and myself, as he took a leading part as a member of the Commission, in the Mississippi Choctaw case.

Q. You will observe that the act of May 31, 1900, was the first act that authorized the enrollment and allotment of lands to the Mississippi Choctaws. Now, it was subsequent to that act that the Commission requested authority to withdraw the rolls submitted March 10, 1899, was it? A. Yes.

Mr. Anderson: That question is objected to as leading.

MR. BALLINGER:

Q. Now state what time, relative to May 31, 1900, the Commission changed its recommendation and position with reference to the rule of evidence that entitled a full blood Indian to be enrolled as a 14th Article claimant?

Mr. Anderson: That is objected to as leading.

A. I don't remember the exact time, but it was after they had submitted his roll that they went down there and made a new roll, which was the result of this act of 1902 being passed, compelling them to have these Indians appear and qualify under the rules of the Department.

MR. BALLINGER:

Q. Now, when the bill that subsequently became a law was under consideration in the Department and before the committees of Congress, do you know of any member of the Dawes Commission appearing before the officers of the Department or before this Congress and urging the inclusion of this rule of evidence by which a full blood Mississippi

Choctaw Indian was deemed to be a 14th Article claimant, which was in accord with their recommendation in the report of March 10, 1899—

Mr. Anderson: That question is objected to as leading.

A. I don't know what proceedings were had before the committees. I know Judge McKennon came before the Indian Office in regard to the matter, but I don't know whether he appeared before the committees of Congress or not.

Mr. Ballinger: Was he, in 1902, opposed to the recognition of the full blood Indian as a 14th Article claimant? A. Yes, he was always opposed to it.

Q. Do you know what the attitude of Mr. Bixby was at that time with reference to the matter? A. As I sated before, they were agreed on everything. Mr. Bixby was at one time violently opposed to the matter, but whether he experienced a change of heart I don't know. The last time I had any conversation with him he was very much opposed to it.

Mr. Anderson: When was that conversation? A. In 1900, in the summer, I think. I can't remember the exact date, but it was about that time.

MR. BALLINGER:

Q. Then, so far as you know, all the members of the Dawes Commission were in 1900 and subsequent thereto opposed to legislation that would recognize the Mississippi Choctaw Indians?

Mr. Anderson: That is objected to as leading.

A. Yes.

Mr. Ballinger: That is all.

RE-CROSS-EXAMINATION BY MR. ANDERSON.

Q. Mr. Jones, do you know what was contained in what was known as the Atoka agreement of 1897? A. I have heard a good deal about it and read a good deal about it, but I can't go into the details of that agreement.

Mr. Ballinger: Suppose you show it to the witness.

MR. ANDERSON:

Q. Have you any recollection of it? A. No, I have not.

Q. Now, Senator Owen stated in his petition and afterwards in his testimony that the provision relating to the full bloods was inserted in the act of July 1, 1902, at the instance

of attorneys for the Choctaw Nation. Do you know anything about that? A. I am under the impression that it was.

Q. And he also has stated that the same provision was contained in the Atoka agreement and was afterwards, through his influence, enacted into law? A. I don't know anything about that.

MR. RICHARDSON:

Q. In your answer to Mr. Anderson's question just now you stated, as I understood you, that the provision for the recognition of the full bloods in the act of 1902 was inserted at the instance of the attorneys for the Choctaw Nation. Is that correct? A. Oh, no; for the Mississippi Choctaws. I don't recall that any of the attorneys for the Choctaw Nation did that.

MR. BALLINGER:

Q. Then when you stated that it was inserted at the instance of the Choctaw Nation or its attorneys you meant the attorneys for the Mississippi Choctaws? A. Yes, sir; that is what I meant. I don't know anything about the action of the attorneys for the Choctaw Nation.

The deposition of GEORGE A. WARD, for intervening claimant, W. S. Field, taken at Washington, D. C., the 23rd day of September, 1910.

Claimant's counsel, WEBSTER BALLINGER.

W. W. WRIGHT, for Howe Estate.

W. E. RICHARDSON, for Arbold.

Q. Mr. Ward, what official position, if any, did you hold in the year 1900? A. I was clerk in the Indian Office.

Q. What was your official designation? A. At that time I was simply clerk.

Q. In what division? A. In the Land Division.

Q. Were you at that time law clerk? A. No, I became law clerk later.

Q. When did you become law clerk? A. I think it was in 1904, either 1904 or 1905. There was never such a thing in the Indian Office as law clerk until I was appointed.

Q. In your capacity of clerk in the Indian Office did you pass upon contracts submitted to the office, contracts with Indian tribes or Indians, submitted to the office for ap-

proval? A. Only with reference to the Five Civilized Tribes.

Q. Did you consider and make recommendations in cases of contracts pertaining to the Five Civilized Tribes? A. Yes, sir.

Q. Did all contracts coming into the office pertaining to the Five Civilized Tribes or any members thereof pass through your hands? A. As far as I know they did.

Q. Do you recall any contracts having been submitted to the office for approval which was made with any bands of Mississippi Choctaws residing in Mississippi? A. I recall a contract that was made with alleged bands of Mississippi Choctaws residing in Mississippi.

Q. Will you state with whom the contract purported to have been submitted that contract? A. Personally I do not know.

Q. Will you state with whom the contract purported to have been made? A. It was either in the name of Lindly—I think his initials are M. M.—or in the firm name, which was Harley & Lindly, or Harding & Lindly. I have forgotten the name of Lindly's partner.

Q. Do you recall whether the contract in question was regular in all respects? A. It was prepared in accordance with the requirements of Section 2103, I think it is, of the Revised Statutes, properly acknowledged and everything of that sort.

Q. Do you recall what action, if any, was taken upon that contract by the office? A. As I now recall, there was no what we term formal action taken. It was all informal, with the Commissioner, Mr. Jones.

Q. Was the matter considered? A. Yes.

Q. State, if you will, briefly, what consideration was given and who were present at any time the matter was up for consideration by the Commissioner. Just state what you recall of what occurred in connection with the contract? A. The contract was filed, as I now recollect, before I went into the Indian Office. I went there, I think, May 16, 1899. It never reached the Files Division; never was given a number. At that time all mail went to the Commissioner before it went to the Files Division, and he only sent that to the Files Division that he desired to. I went to the Indian Territory on December 16, I think it was, 1899, and it was either

just before I went or just after I got back that Commissioner Jones called me into consultation about the contract, with reference to the action which should be taken and everything of that sort. My recollection is that the first time he called me in nobody was present but the Commissioner and myself. The second time Chester Howe was present, and I think Walter Field was present, and then the whole thing was threshed out, and the Commissioner decided he would take no formal action on it and returned the contract, or the conclusion was that he would return the contract. I don't know what became of the contract. I don't know that he did return the contract.

Q. Will you please state the reason that action on the contract by the office was withheld? A. There was a difference of opinion in the office between another gentleman and myself as to what action should be taken on the contract. It was my opinion that we had nothing whatever to do with the Mississippi Choctaws; that we had no jurisdiction of those who remained in Mississippi under the Treaty of 1830, and so far as making contracts was concerned we had no authority, and we never recognized the Indians in Mississippi as a tribe or as a band and should not approve the contract.

Q. Your advice, then, was that the Department had no jurisdiction over the Indians, either individually or as bands, residing in Mississippi? A. Absolutely. They were citizens of the State under the treaty.

Q. And, further, that any contract entered into with them, either as bands or as individuals, were matters strictly with them? A. Absolutely.

Q. That view was sustained by the Commissioner, was it not? A. Yes, sir.

Q. Was any suggestion made at any conference held before the Commissioner with reference to the taking of individual contracts? A. Yes, sir.

Q. Please state what it was? A. I made it myself. I told Chester Howe that we had no jurisdiction and "Why don't you go and make individual contracts?"

Q. Do you recall whether Walter Field called at your office repeatedly thereafter, either personally or with Chester Howe, urging action upon Mississippi Choctaw cases? A. Oh, yes. They were in there annoying us practically every day, both of them.

Q. And they called with reference to the class of cases known as Mississippi Choctaw cases? A. Yes, sir.

Q. Was it understood at the office that they were acting jointly? A. That was the way we understood it. In other words, if Mr. Field would come in and inquire about business of Mr. Howe we would give him information, and if Mr. Howe came in and inquired about Field's business we gave him information.

Q. At the time the band contract was up for consideration by the Commissioner was it understood that Walter Field had an interest in that contract?

By MR. RICHARDSON:

I object to the question as calling for the understanding of the witness, which would necessarily be based on facts, to which facts he should testify instead of his understanding.

A. I don't recollect about Mr. Field, but Howe was mentioned in the contract in some way. I don't think he was a party to it, but he either had an assignment or something. Howe was mentioned in it. I don't remember whether Mr. Field was or not.

Q. Was there submitted at that time, or was there offered for the opinion of the office, any assignment or separate contract in which the names of either Chester Howe or Chester Howe and M. M. Lindly or Walter Field appeared? A. As I said, I don't recollect about Mr. Field, but Howe was mentioned in some way with the contract, in all probability as an assignee. I don't think his name was mentioned in the body of the contract, but he was connected with it in some way.

Q. That is, you mean to state that Chester Howe's name did not appear in the band contract, but appeared in some other paper? A. That is the way it was.

Q. Mr. Ward, I ask you whether at any time any contract was presented by Chester Howe or by any other person representing J. E. Arnold, purporting to be a contract with Mississippi Choctaws or bands of Mississippi Choctaws for approval of the Department?

By MR. RICHARDSON:

I note an objection to that question upon the ground that the proof called for should properly be of record, or it should be shown that the records are deficient on that point before verbal testimony can be considered by the court.

A. My recollection is that no such contracts were presented by anybody.

Q. Mr. Ward, I hand you a paper which is entitled "Power of Attorney and Contract" (handing witness Exhibit James E. Arnold B-8), and purporting to have been signed by 17 persons, each signature being by mark, and I ask you whether such a paper was ever during your official connection with the Indian Office brought to your attention? A. Not to my recollection. I think that later, say along about 1905 or 1906, there was a power of attorney submitted to the office, or a copy of the power of attorney, by the Dawes Commission from this Billy Jack, Isaac Johnson and Big John in connection with the disbarment proceedings against Mr. Arnold.

Q. If such a paper as that had been presented to the office would it have received consideration? A. It would have been just turned down because it was not in proper form. That is, one just like this one would not be in proper form to receive consideration. It is not acknowledged or anything of that sort.

CROSS-EXAMINATION BY MR. RICHARDSON.

Q. Your criticism of the form of this contract does not relate to the body of the contract, but to the character of the certificates that should be attached showing approval before a United States Judge? A. That is right, and, in addition to that, it is not in the form prescribed by law; that is, the body of the contract is not.

Q. In what particular does that contract not comply with Section 2103 of the Revised Statutes as far as the body of the contract is concerned? A. In the first place, if you make a contract with an Indian tribe you have to get authority from the Commissioner of Indian Affairs to go on the reservation. Then the Indians are called in council, they pass a resolution appointing a business committee and authorize that committee to enter into a contract, sometimes naming the person with whom the contract is to be made. Everything of that kind is attached to and becomes a part of the contract.

Q. Were those conditions complied with in reference to the Lindly contract to which you have testified? A. No, sir; because we had no jurisdiction.

Q. Does not this contract purport to be with the same Indians? A. It purports to be with the same Indians, but,

if I understood you correctly, you asked me why this did not comply with the statute. I wish to be understood, first, that it was my opinion and the opinion of the Indian Office that we had no jurisdiction over the Mississippi Choctaws and could not approve contracts with them.

Q. The purpose of my question was to ascertain what distinction, if any, existed between this contract and the other contract to which you testified. Then, as I understand you to say, that same objection existed to the Lindly contract?

A. No. The Lindly contract, as I remember, was properly acknowledged and complied with the statute, but the other formalities, about getting authority from the Commissioner of Indian Affairs, were not complied with, and did not have to be, nor did it have to be in this case, and, as I recollect, the Lindly contract was made with two or three alleged bands and after they had met in council and authorized a committee to enter into the contract.

Q. Was this Lindly contract in typewritten form or in script? A. It was typewritten.

Q. Do you recall before what United States Judge it was acknowledged? A. Oh, no. It was acknowledged some place down there in the South, in Mississippi, I think.

Q. Was it filed in the office with the letter accompanying? A. Yes. My recollection is that it was, and that the letter, a little letter, was signed by Chester Howe.

Q. I believe you stated this contract was filed before you went into the office in May, 1899? A. Yes.

Q. Do you know what record was made of the receipt of communications at that time? A. The mail went to the Commissioner of Indian Affairs. It was opened in his room and put on his desk, and, of course, he was supposed to read it all before it went to the files. He sent such of it to the files as he saw fit and retained such on his desk as he saw fit.

Q. Was there any official record kept in the office showing the receipt of letters unless they went to the Files Division? A. No, sir; there was not.

Q. Was there any acknowledgment made of such letters by mail? Was there any systematic routine with respect to the treatment of such communications which did not go to the Files Division? A. I don't know. We would never see them unless they came in for discussion.

Q. I believe you testified that there was a difference of opinion in the office between yourself and another gentleman as to the right to approve this alleged Lindly contract with the Mississippi Choctaws? A. I did.

Q. Who was the gentleman referred to? A. W. C. Van Hoy. He lives in Bartlesville, Oklahoma.

Q. In a question asked you on direct examination you were asked to state whether the reason for the non-approval of this alleged Lindly contract was the fact that the Indians did not constitute a band or tribe within the meaning of the statute, and that it related to matters, quoting from the question, "matters strictly with them." What did you understand counsel to mean by the term that it related to "matters strictly with them?" A. I understood it to mean that they were citizens of the State and of the United States, and beyond our jurisdiction, and they had the same right to contract as a white person.

Q. Did you prepare any memorandum on this question submitted to the office, or any minute of authorities or brief? A. I did. I think I prepared it for Major Larrabee, who was then Chief of the Land Division.

Q. Did you make any objection to the approval of the contract upon the ground that their claim was not a claim against the United States, but was a claim against other Choctaw Indians? A. I objected to it on the ground, first, that they were citizens and we had no jurisdiction; second, that if they had any rights in the Indian Territory they were under the Treaty of 1830, and they had to comply with that treaty; and, third, that it was not a claim against the United States, but a claim against the Choctaw Nation for a property right within a Choctaw estate.

Q. You stated that Messrs. Howe and Field appeared before you almost daily in connection with Mississippi Choctaw matters. Did they come together or separately? A. Sometimes they would be together and sometimes they would be separate, and sometimes Howe's girl would come over and inquire about it; Howe's stenographer.

Q. What was the subject of these frequent calls? Was it the general Mississippi Choctaw claim to a right in the Choctaw lands and funds or to the right of individual Mississippi Choctaws to enrollment on the Cherokee rolls? A. Both.

Q. Over what period did these visits extend? A. From May 16, 1899, to March 4, 1907. I think it was May 16.

Q. Are you familiar with what were known as 14th Article cases? A. Absolutely.

Q. Did these interviews with you relate to any large degree of those cases? A. Principally to those, to the rights of what we called the 14th Article people.

Q. When claims of these 14th Article people came before your office they were treated as separate cases and docketed in the name of the head of the family? A. Yes, sir; that is, in the name of the principal applicant; sometimes it would not be the head of the family.

Q. When attorneys looked into those cases or represented those cases did your office require them to enter an appearance? A. No, sir.

Q. Do you recall whether Mr. Chester Howe was interested in any particular cases which you could name now? A. I could not without going to the records; there are so many of them.

Q. Can you state in a general way how many individuals were affected by these 14th Article decisions? A. I think there were something like 4,000.

Q. Do you know about how many of these 4,000 were actually put on the rolls under the 14th Article? A. I can't say definitely. I would have to go to the record and count them.

Q. Do you know whether any of these conferences with Mr. Howe related to objections which were made to the approval by the office of the request of the Dawes Commission made in November, 1900, to withdraw the McKennon roll of March 10, 1899? A. My recollection is that the conference did not relate to that, but that I discussed the matter of withdrawing the roll with Mr. Howe and with other attorneys, and finally reached the conclusion not to let them withdraw it. The roll was in duplicate and the Dawes Commission wanted to withdraw both copies, as we understood it, to get it out of the way, and we refused to do it. I discussed it with Mr. Howe and other attorneys, and got all the advice on the subject I could get.

Q. Do you know whether any of these conferences with Mr. Howe related to the action to be taken by your office on the Choctaw and Chickasaw supplemental agreement submitted by the Dawes Commission in the latter part of 1900,

which was never approved by the Interior Department? A. No, I can't say as to that.

Q. Do you recall whether any of these conferences related to the action to be taken by the Department on the unratified Choctaw and Chickasaw supplemental agreement of February 7, 1901? A. We never discussed with any person other than a Government official the action that was to be taken by our office on any agreement.

Q. Did the office put itself on record as having adopted this position by actually refusing to discuss this agreement with attorneys? A. In the first place, an attorney would have more propriety about him than to attempt to discuss a matter of that sort that was then before the Department and was to be submitted to Congress, and if he did he would be called down on short order.

Q. Is it not a fact that the attorneys representing these two nations did discuss these matters with the Department? A. Yes. They were regarded as being officers of the Department.

Q. This contract with Lindly, as you recall, was made with either Mr. Lindly or his firm? A. Lindly or his firm. The firm was either Harley and Lindly or Harding and Lindly.

Q. About what date was that contract? A. I don't recollect now. It was filed long before I had anything to do with the Indian Office. I don't mean filed there; presented to the Commissioner, because it was never filed.

Q. Do you recall the year in which it was executed? A. No, I do not.

Q. Was the contract witnessed as well as acknowledged before these officers? A. It was, as I remember, regular in form and complied with the statute.

Q. About how many signatures did the contract have as far as representatives of the Indians were concerned? A. I think there were about six. I think there were three alleged bands and six signatures, possibly nine.

Q. Did these bands have any distinctive names? A. They had names that they gave themselves, but I don't remember them now. They were names that they adopted.

Q. Do you recall whether these purported to be signed by representatives selected for that particular purpose or by the regular chiefs of the bands? A. My recollection is that they were signed by representatives selected for that purpose.

Q. About how many pages of typewriting did this contract consist of? A. About three, the contract itself, and then the usual certificates.

Q. Was it paper just fastened together or did it have a regular cover? A. As I recollect, it had a cover.

Q. Do you know whether there were any particular endorsements on that cover? A. I think not.

CROSS-EXAMINATION BY MR. WRIGHT.

Q. In your direct testimony when you spoke of Mr. Howe's name appearing in the individual cases you referred to the powers of attorney that were filed with those cases, did you not? A. Not necessarily. Often power of attorney was not required. We recognized any reputable attorney who was admitted to practice before the Department, and did not require him to file an authority in citizenship cases. All told, I do not suppose there were in the 280,000 cases 100 powers of attorney filed.

Q. It was customary for the attorneys to file a letter of appearance, was it not, in each case? A. Sometimes they did and sometimes they did not. If an attorney came in and said, "I am attorney for A. B." and we knew him, we took it for granted he was telling the truth and let him see the record.

Q. And if later on he presented any arguments or took any formal action as attorney, it would appear by reason of his correspondence in the case? A. Yes.

Q. Do you recall at one time that there was some complaint made by attorneys for certain applicants because the Dawes Commission failed or refused to make a record of the individual cases of the Mississippi Choctaws? A. When do you mean?

Q. I mean at any time while they were passing on those cases? A. My recollection is that there was complaint made, either when McKennon was in Mississippi in 1899—I think it was—or subsequently, when they were down there enrolling the Mississippi Choctaws.

Q. Do you recollect whether the Dawes Commission was subsequently advised or instructed by the Secretary's office to make a record of those applications so that there might be something to consider on appeal or when the matter came

to the Department? A. The Commission was repeatedly instructed to make a record in every case, no matter whether it was that of a full blood, mixed blood or freedman.

Q. Is it not a fact that this matter was brought to the attention of the Secretary's office by Mr. Howe in some of the cases in which he appeared? A. I can't say; I was not in the Secretary's office; I was in the Indian Office.

Q. Do you recollect whether this question was brought to the attention of the Indian Office by Mr. Howe in any of his cases? A. No, I can't say as to that.

Q. You made some reference in your direct testimony to the disbarment of Mr. Arnold. In what way did that affect Mr. Arnold in so far as his right to examine records of the Indian Office was concerned? A. After that he was not allowed to examine any records, to see any records. That is, after he was suspended and subsequently disbarred. And his communications relating to any matters, if any were received, would simply be acknowledged and no information given.

Q. Then, according to the practice of the Indian Office, when a person is disbarred he is absolutely denied any information regarding the records and is not allowed to obtain any information as to any specific cases? A. That was the practice when I was there.

Q. Was that the practice also in cases of suspension? A. Yes.

Q. I understand from your direct examination that when these treaties had been negotiated by the Commission to the Five Civilized Tribes and the official representatives of the Indians, and were being considered by the Secretary of the Interior, the attorneys for the Choctaw and Chickasaw Nations, or the attorneys of the attorneys for the nations, were present at conferences. Is that correct? A. It is. The attorneys for the different nations were called in and consulted about each and every agreement that was made with them.

Q. Then the only opportunity for other attorneys practicing before the Department was after the agreement had been submitted to Congress? A. It was after it was introduced as a bill. Then they were at perfect liberty to come to the office and discuss any of its provisions with any of the employes who were on that work.

Q. While you were employed in the Indian Office at any time did you go before any of the committees of Congress in your official capacity? A. Yes, many times, but not in connection with any agreements.

Q. Did you appear before any of the committees of Congress in the matter of the supplemental agreement approved July 1st, 1902? A. No, sir.

Q. Did you appear before any committees of Congress while it had under consideration a certain agreement with the Choctaw and Chickasaw Nations introduced in the House of Representatives as a bill described H. R. 14,310, February 28, 1900? A. I did not appear before any committee of Congress in connection with any agreement with either of the tribes.

CROSS-EXAMINATION BY MRS. LOCKWOOD.

Q. I understand you to be talking about a contract that has been lost? A. I don't know what you understand me to be talking about.

Q. You are talking about an alleged contract that has been lost? A. I do not so testify. I know nothing about that.

Q. You are testifying about a contract? A. Yes.

Q. Who was that contract between? A. Between some Indians in Mississippi known as Mississippi Choctaws and either Lindly or Harley or Harding and Lindly. It was either in Lindly's name or in the firm's name. His partner was either Harley or Harding, I am not sure which.

Q. It was between the Mississippi Choctaws and this firm? A. Yes, this firm or Lindly, a member of the firm.

Q. Now, what do you understand about who are Mississippi Choctaws? A. The Indians who remained in the State of Mississippi and became citizens of the State under Article 14 of the Treaty of 1830.

Q. Were all those who remained under Article 14 of the Treaty of 1830 included in this contract? A. I can't tell as to that.

Q. What Mississippi Choctaws are there or what class of Choctaws not included in this contract? A. I could not tell as to that.

Q. These three bands which were included in this contract, you don't know the names of the bands? A. We never recognized them as bands or otherwise.

Q. You did not recognize them in any way? A. In no way.

Q. About how many of them were there, I mean what you call Mississippi Choctaws, included in this contract? A. I don't know how many were included in this contract.

Q. In the three bands? A. I don't know anything as to the number. I think that there were, all told, about 4,000 claimants, something like 4,000, for rights as Mississippi Choctaws.

Q. Where were these three bands located geographically, so far as you know? A. Down in Mississippi. The Mississippi Choctaws principally lived in Leake County and in some other counties down around Meridian.

Q. You just know Leake County?

CROSS-EXAMINATION RESUMED BY MR. WRIGHT.

Q. Mr. Ward, you have stated in your examination that the only Mississippi Choctaws were those residing in Mississippi who were beneficiaries under Article 14 of the Treaty of 1830? A. They were the only ones authorized to be enrolled, or those who had complied with the Act, I think, of August 12, 1843.

Q. Is it a fact that the basis of your conclusion or statement is the fact that they were the only class who had been officially recognized by Congress under the statutes? Is there any reason that you know of, except the lack of Congressional recognition, that would prevent the 19th Article Mississippi Choctaws from being considered in the class of Mississippi Choctaws? A. Not as we understood the Mississippi Choctaws. The 19th Article people were not given any rights under the treaty if they removed to the Indian Territory, while the 14th Article Choctaws were given rights, provided that those who stayed under the 14th Article should not lose their right of citizenship if they ever removed. The 19th Article people became citizens of the State of Mississippi, and they did not have any right under the treaty to

go to the Indian Territory and claim rights in the property. Of course Congress could pass a law, if it saw fit, giving those people rights and modifying the treaty.

**CROSS-EXAMINATION RESUMED BY MRS.
LOCKWOOD.**

Q. I want to know if any of these Choctaws, so far as you know, were located on or near the Gulf of Mexico? A. Not so far as I know. My understanding is that they were strung around through Louisiana, Mississippi and that section of the country.

RE-DIRECT EXAMINATION BY MR. BALLINGER.

Q. You were asked on cross-examination by Mr. Richardson whether there was any difference between the contract, or the paper which purports to be a contract and which purports to have been entered into between certain persons, all of whom sign their names by marks, with J. E. Arnold, and the contracts submitted informally to Commissioner Jones and which purported to be signed by the representatives of two or three bands of Mississippi Choctaws entered into with M. M. Lindly or Harley and Lindly. I hand you the paper which purports to be a contract with J. E. Arnold (handing witness Exhibit J. E. Arnold B-8), and ask you whether that paper contains any definite time, as required by Section 2103 of the Revised Statutes of the United States, in which it should run?

By MR. RICHARDSON:

Objected to on the ground that the agreement referred to speaks for itself and it is the duty of the court to determine whether it complies with the law.

A. I read it over a while ago, and my recollection is that it does not.

Q. I ask you whether that paper purports to have been made in duplicate?

By MR. RICHARDSON:

Same objection.

A. No, it does not seem to.

Q. I ask you whether that paper purports to have been executed before a judge of a court of record?

By MR. RICHARDSON:

Same objection.

A. No, it does not.

Q. I ask you whether that paper purports to contain the names of all the parties in interest, their residence, occupation, and whether it is a tribal agreement or an individual agreement, and the scope of the authority of the person signing it?

By MR. RICHARDSON:

Same objection.

A. It purports to be on behalf of the parties signing it and all the Choctaws living in Mississippi and Louisiana.

Q. Does it state their residence and occupation?

By MR. RICHARDSON:

Same objection.

A. It does not.

Q. Does it state the authority by which they executed the instrument?

Same objection by Mr. Richardson.

A. No, sir.

Q. Does it state the time when and the place where it was entered into?

Same objection by Mr. Richardson.

A. It states the time, which is the 26th of June, 1897, but it does not seem to give the place.

Q. I ask you now whether that contract in any respect conforms to the requirement of Section 2103 of the Revised Statutes of the United States?

Same objection by Mr. Richardson.

A. In my judgment it does not.

Q. I ask you now whether you are clear in your memory that the contract submitted which purports to be in the name of M. M. Lindly or Harley and Lindly conformed with all the requirements of Section 2103 of the Revised Statutes?

A. My recollection is that it complied absolutely with all the requirements of that law.

Q. What are known as the Mississippi Choctaws are not reservation Indians, are they? A. No, sir; that is, those who still remained in Mississippi. Of course, those who have moved to the Indian Territory are now on what we call an Indian reservation.

Q. So that, as far as the Indians in Mississippi were concerned, there was no authority in your office to issue a permit to Mr. Lindly or his associates to go among the Indians and make the contracts? A. We would not have issued a permit to anyone?

Q. Why not? A. Because we did not have any jurisdiction over them.

Q. Did they have an agent? A. No, sir. That is, they had no Government agent.

Q. Was there any person to whom a permit could have issued? A. No, sir.

Q. I ask you what the custom of Commissioner Jones was with reference to retaining on his official desk papers of this nature and submitted informally to the office? A. Usually he would retain such papers and also others that came in in regular way, and then he would call in the person who was going to handle it and discuss it with him and find out what action ought to be taken, what action he could legally take and tell that person to go ahead, and then the paper would come in the regular way to the files.

Q. If the paper was such a paper as the office would not act upon officially, then what was the custom? A. So far as my part of the work was concerned, if it had not gone to the files I would advise him to let the person who filed it withdraw it informally with no record of it. If it had gone to the files there would have to be an application to withdraw it.

Q. You stated, as I recall, on your cross-examination, that what are known as Mississippi Choctaws were those Indians remaining in Mississippi. Were they confined to the State of Mississippi? A. Oh, no. Down through the South generally, in Mississippi, Louisiana, and I think some in Alabama; principally in Mississippi, as I understand.

Q. You were asked on your cross-examination with reference to certain visits made by Mr. Howe or Mr. Howe and Mr. Field to the office with reference to legislation. I ask you whether you recall any such visits, and, if so, the object of Mr. Howe and Mr. Field? A. It was to secure legislation that authorized or allowed the enrollment of many people down in Mississippi. For instance, at one time—I don't believe Field visited the office in connection with this, but

Mr. Howe did and others—they wanted, as I recollect, the fathers, grandfathers, sisters-in-law, brothers-in-law and so on enrolled as Mississippi Choctaws. Mr. Howe and others undertook to get such an amendment in either the supplemental agreement of July 1, 1902, or in an Indian appropriation act. We sat down on the proposition like a thousand bricks.

Q. Under the Act of June 10, 1896, did you receive complaints from any attorneys because of the alleged refusal of the Dawes Commission to receive and consider applications of non-resident Mississippi Choctaws? A. Many. The complaints came in later, in 1900, 1902 and along there.

Q. Do you recall the leading decision or ruling of your office on that question, in what case the ruling was made? A. You mean about applications?

Q. Requiring record to be made of them? A. No, I don't recall. There were so many of them.

Q. Did the Commission assume the same position under the Act of 1898 at first? A. It did.

Q. Did your office make any rulings under that act relative thereto? A. Relative to what?

Q. Relative to the receipt by the Commission and the making of the record thereof of the applications of the non-resident Mississippi Choctaws? A. Yes, as to them and all others. I remember distinctly that we held that a postal card was an application. There was a girl in California who made an application by postal card. The Commission turned her down and she appealed to the Indian Office, and we held that it was an application, and that they were in duty bound to take her testimony.

Q. To refresh your recollection, I ask you if you recall the Denby Wingfield case? A. No, I do not.

Q. Do you recall any visits to your office by Mr. Howe or Mr. Howe and Mr. Field relative to a reversal of the ruling of the Commission denying them making any record thereof of the applications of the Mississippi Choctaws? A. Yes and of many other persons.

Q. And it was as a result of the complaints made by Mr. Field, Mr. Howe and other attorneys that your office directed the Commission to receive and make a record of these applications? A. Yes, sir; and also that of applicants themselves; that is, the complaints of applicants themselves.

RE-CROSS-EXAMINATION BY MR. RICHARDSON.

Q. You examined the contract which is a part of Exhibit Arnold B-8 in your re-direct examination. I will ask you whether, in your opinion, that contract was a valid contract with those Indians? A. In my judgment that contract was valid so far as the parties who signed it were concerned, provided they were Mississippi Choctaws?

Q. It was not, under your construction of the law, Section 2102, which construction was confirmed by your superior, the Commissioner of Indian Affairs, necessary for a contract with the Mississippi Choctaw Indians to be executed with the formalities required by Section 2103 or to be approved by the Indian Office? A. It was my advice to the Commissioner, which he accepted, that we had no jurisdiction over those Indians down there in making contracts, and it was none of our business whether they complied with the statute or they did not, and that we had no authority either to approve or disapprove them.

Q. And that was based upon the fact that those Indians were by your decision of that time not tribal Indians, but citizens of the State of Mississippi? A. That is right.

Q. In the cases before the Indian Office you have two classes of powers of attorney and contracts, one class which required approval under Section 2103, and the other class where an attorney, to be entitled to recognition as an agent of an Indian who is not in tribal relations, does not have to have his contract approved? A. With reservation Indians outside of the Indian Territory the contracts with attorneys must be made in accordance with Section 2103. In the Indian Territory, with the different nations down there, contracts are made under tribal acts approved by the President, and it takes them out of the statute. So far as my work was concerned, we did not require powers of attorney in citizenship cases. Any attorney that came in and who had been admitted to practice and said he represented any applicant, we allowed him to see the record.

RE-DIRECT EXAMINATION BY MR. BALLINGER.

Q. You have stated, as I recall, that contracts with the Five Civilized Tribes were first initiated by the action of the

tribal councils and then approved by the Secretary of the Interior and then by the President? A. That is right.

Q. Such was the law at the time these contracts were entered into? A. No. That commenced in 1899. The first contracts made under tribal contracts were the McMurray, Mansfield and Cornish contracts.

Q. Neither the Arnold contract nor the Lindly contract came within the provisions of Section 2103 of the Revised Statutes of the United States? A. Not in my judgment.

Q. And so held by your office? A. Only as to the Lindly contract. The Arnold contract, I don't remember of it ever having been filed or presented.

RE-CROSS-EXAMINATION BY MR. RICHARDSON.

Q. Did Senator Owen call upon you with reference to this matter, these Mississippi Choctaw cases? A. Oh, yes. He was one of the persons that tried to get that law through about enrolling the grandfathers, grandmothers and fathers-in-law.

RE-DIRECT EXAMINATION BY MR. BALLINGER.

Q. Do you recall the amount of the percentage to be paid in the contract submitted by Mr. Howe or Howe and Field for Lindly? A. I don't know who submitted the contract, but the percentage in the contract, as I recollect, was 25 per cent or a sum of money—I think that was the way it read—equal to 25 per cent of the value of the allotment.

Q. What view did the Department take as to the reasonableness of that percentage? A. The Commissioner of Indian Affairs at first objected, but I told him that under all the circumstances it was a reasonable fee and he agreed with me afterwards.

Q. Was there at that time a tacit understanding that the individual contracts suggested at that time were to be taken upon a similar basis and that they would not meet with opposition from the Department? A. So far as the Indian Office was concerned. This contract, so far as I know, never went to the Department.

Q. You are familiar with the allowance of fees by the Department for the purpose of enrolling Indians? A. Yes, sir.

Q. Can you state the percentage or percentages ordinarily allowed for such services as were rendered by attorneys in citizenship cases in the Five Civilized Tribes? A. The Commissioner of Indian Affairs, Mr. Leupp, agreed to allow attorneys, I think it was, 20 per cent for securing the enrollment of persons whose names had been stricken off the roll after the roll had been approved.

Q. In that case there was no legislation required, was there? When suit was prosecuted to the United States Supreme Court that determined a large number cases, did it not? A. Yes.

Q. And the allowance of 20 per cent was in each case affected by that decision? A. Yes.

Q. Can you state the customary allowance in other enrollment cases of similar nature? A. We had nothing to do with them.

Q. Mr. Ward, you are familiar with the services rendered by Chester Howe, Walter Field and other attorneys in the Mississippi Choctaw cases, are you not? A. Yes, sir.

Q. Assuming that their services commenced in 1896 and continued until the close of the rolls in 1907, in both the procurement of legislation and the prosecution of the cases before the Department, what would you consider a reasonable fee? A. I would consider 25 per cent a very reasonable fee.

RE-CROSS-EXAMINATION BY MR. WRIGHT.

Q. After the decision of the Goldsby mandamus suit, in which and in similar cases the Commissioner of Indian Affairs had held that 20 per cent was reasonable, is it not a fact that all other similar cases were acted on favorably by the Secretary whenever it was shown to him that such persons were squarely within the Goldsby decision? A. That is my understanding, that their names were restored to the roll; rather, that the lines eliminating the name were removed.

In answer to general questions witness states that he knows nothing further relative to the claim in question.

GEO. A. WARD,

FRANCIS L. NEUBECK, Commissioner.

Honorable Solicitor General of the United States.

SIR:

Please take notice that on Monday, December , 1918, at the convening of the Court, or as soon thereafter as the business of the Court will permit, I shall present the above motion to the Supreme Court of the United States, and ask the Court to consider the same.

Very respectfully,

Attorney for Appellants.

I hereby acknowledge service of a copy of the above motion, affidavit and brief, this day of November, 1918.

.....
Solicitor General of the United States.

SUPPLEMENTAL BRIEF

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Supreme Court of the United States.

Nos. 124, 125, 126, 127, 128 AND 129.

OCTOBER TERM, 1918.

J. S. BOUNDS, ATTORNEY IN FACT FOR T. A. BOUNDS,
JOHN LONDON, WALTER S. FIELD, MADISON M. LINDLY,
J. J. BECKHAM, WILLIAM N. VERNON, and KATIE A.
HOWE, EXECUTRIX OF THE ESTATE OF CHESTER HOWE,
DECEASED, *Appellants*,

vs.

JACK AMOS AND OTHERS, KNOWN AS THE MISSISSIPPI
CHOCTAWS.

Brief for Appellants on Appellees' Motion to Dismiss or Affirm

AND

Supplemental Brief for Appellants on the Merits.

STATEMENT.

About November 20th, 1918, these Appellants filed in the Clerk's Office of the Supreme Court a motion to remand the cases to the Court of Claims for additional Findings of Fact, and supported the same by an affidavit and brief. The Solicitor-General was duly served with a copy of the motion

and brief, and the Clerk of the Court, through one of his assistants, and the Solicitor-General, through one of his assistants, were notified by the attorney for the Appellants that the brief in support of the motion to remand was intended and would be used as the Appellants' brief on the merits if the cases were reached for argument before action on the motion to remand had been taken.

In explanation of the delay in filing the motion to remand, it may be proper to state that Walter S. Field, one of the principal Appellants, and the one best posted as to the whole case, was called to England on business directly growing out of the war about a year and a half ago, expecting, at the time, to be gone only a few weeks, but unexpected delays, over which he had no control, have detained him there until the present time. The motion was not sooner made because the attorney for the Appellants had reason to hope and expect to be able to consult with him before filing the motion.

APPELLEES' MOTION TO DISMISS OR AFFIRM IS WITHOUT MERIT.

JURISDICTION.

The question of the jurisdiction of the Court of Claims was directly raised by the Appellees before the Court of Claims in a motion to dismiss filed February 17, 1912, argued May 20, 1912, and overruled December 2, 1912. (Record, p. 93.)

To determine this question it would be necessary for this Court to examine and construe the Acts of Reference, and to consider all the facts as found by the Court, as well as the claims of Appellants that material facts were entirely omitted from the Findings.

LIABILITY OF THE MISSISSIPPI CHOCTAWS AS A CLASS.

The Court of Claims has directly held that the only liability possible under the Acts of Reference is liability of the Mississippi Choctaws as a *class*, while the Appellants earnestly contend that there may be *individual* liability as well as liability as a *class*. These are questions that are to be settled by this Court, and require a full examination and consideration of the Acts of Reference and the Facts found and those which should have been found.

The Solicitor-General has cited no case where this Court has disposed of questions of this character by the summary proceeding of a motion to dismiss or affirm, and we confidently submit that no such case can be found, and that the rules of this Court do not provide for any such procedure in cases of this kind.

If, however, the Court should be in doubt on this point, we ask the attention of the Court to the Appellants' brief filed in support of their motion to remand, particularly to pages 22 to 35 and 48 to 50.

The case of *Green vs. Menominee Tribe of Indians*, 233 U. S. 558, cited by the Appellees in their brief on the merits in No. 123, page 28, certainly has no bearing on this case. That case decided that the Menominee *Tribe* of Indians cannot be held bound by a promise to pay the debt of an individual Indian for his individual supplies, unless the promise to pay is shown to have been in writing. This Court further holding that the Act of Reference in that case "conferred no jurisdiction upon the Court below *over claims against an Indian as a mere individual aside from his membership of the tribe.*"

In this case all the service rendered were distinctly and directly *in respect to the membership of the Indians in the tribe*, and were necessary to establish the Indians' "*citizenship in the Choctaw Nation.*"

The Mississippi Choctaws are still in tribal relation, and Congress still has full control of their tribal lands and funds.

Congress could unquestionably have directly appropriated money out of the Mississippi Choctaw funds to pay for the services rendered by the claimants to the Mississippi Choctaw Indians in establishing their right to citizenship in the Choctaw Nation.

See authorities cited on page 50 of Appellants' brief on motion to remand.

As Congress had the unquestionable right to determine the value of these services and make an appropriation out of the Indians' funds to pay for these services, it was clearly within the authority of Congress to direct the Court of Claims to determine the value of the services and enter the judgment accordingly, and that is just what Congress has done by the Acts of Reference in this case.

No. 124.

CLAIM OF J. S. BOUNDS, ATTORNEY IN FACT FOR T. A.
BOUNDS.

The petition in this case will be found on pages 51 to 61 of the Record.

The allegations of the petition, all of which were supported by proof, have in general terms been sustained by the Findings of the Court (Finding XXXVI, Record, p. 121). The allegations, in brief, are as follows:

That T. A. Bounds entered into contracts with a large number of individual Mississippi Choctaws, whose names are given, to assist them in securing their identification and enrollment in the Choctaw Nation. That in compliance with

his contract the said Bounds did assist in the identification of these Indians; assisted them to remove to Indian Territory; secured them locations in the Choctaw Nation, and helped maintain them there while their rights were maturing. That these Indians, naming them, were actually enrolled and allotted as Mississippi Choctaws. That the said Bounds expended about \$20,000 in this work, and devoted a large amount of time and labor for which he asks compensation.

As above set forth, the Court of Claims has in general terms found all the substantial facts as claimed by this Appellant, but the Court dismissed the petition on the ground that claims for service to individual Indians could not be maintained under the jurisdictional Acts.

It will be noted that Bounds' name is directly mentioned in the Act of Reference of May 29, 1908 (Record, p. 96), and it must be presumed that Congress knew the nature of his claim and the character of the services rendered by him. Congress undoubtedly had the power to refer this claim to the Court of Claims, and in express terms did so refer it.

It will be observed that under the provisions of the Act of July 1, 1902 (Record, p. 114), which established the rights of the Mississippi Choctaws, in order for any Indian to perfect his right to citizenship in the Choctaw Nation a number of things were necessary:

1st. He had to be identified as a Mississippi Choctaw.

2nd. He had to make a *bona fide* settlement within the Choctaw-Chickasaw County, *within six months after the date of his identification.*

3rd. He had to make proof of such settlement within one year after the date of said identification.

4th. He had to reside continuously for the period of three years upon the lands of the Choctaw and Chickasaw

Nations, and make proof of such *bona fide* residence within four years after his enrollment.

It was not until the final proof of settlement and continuous residence was made that the right of any Mississippi Choctaw to citizenship in the Choctaw Nation was perfected.

T. A. Bounds, under contracts of employment with a considerable number of Mississippi Choctaws, assisted them in perfecting their rights to citizenship and expended large sums of money and much labor in their behalf. His efforts were successful and resulted in securing for his clients very large financial benefits. He has not been paid for his services and expenses, and Congress has directed the Court of Claims to determine the amount to which he is equitably and justly entitled, and to enter up judgment in his favor therefor. This the Court of Claims refused to do solely upon the ground that the Act of Reference did not permit the entry of judgment for services rendered an individual Mississippi Choctaw.

We submit that the Court of Claims was in error in this, and in further support of this contention ask the Court to consider pages 24 to 35 and page 50 of the Appellants' brief filed in support of their motion to remand the case to the Court of Claims, where the question is considered at length.

No. 125.

CLAIM OF JOHN LONDON.

The petition in this case will be found on pages 83 to 87 of the Record.

The material allegations of the petition, all of which were supported by testimony, are as follows:

That in conjunction with Walter S. Field and M. M. Lindly he was an associate of Chester Howe in the prosecution of the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation. That he secured from certain heads of Mississippi Choctaws a contract of employment in the name of M. M. Lindly authorizing the said Lindly, his associates and assigns, to prosecute the said claim of the Mississippi Choctaws, and also secured from a large number of heads of families individual contracts and powers of attorney authorizing the said Lindly to prosecute their claims, the total number of said contracts supplemental to said head contracts being more than six hundred. That in accordance with his agreement with Lindly, Field and Howe, he appeared from time to time before the Dawes Commission, urging the claim of the Mississippi Choctaws, and later furnished 900 heads of families and adults with applications for identification, upon which applications they were subsequently identified. That the form of this application was furnished him by the said Lindly and Field. That where the Commission refused enrollment, he provided for an appeal to the Commissioner of Indian Affairs, which appeal was forwarded through the said Lindly. That the form for said petitions on appeal was furnished him by the said Lindly and Field. That a large sum of money was expended by him in securing the attendance of the Mississippi Choctaws before the Dawes Commission, and that the amount thus expended by him in excess of receipts was over \$5,000. That he, in connection with his associates, Field, Lindly and Howe, represented the entire body of the Mississippi Choctaws.

This claim is so closely identified with that of Lindly and Field that it may be better considered in connection with that claim. The Court of Claims in Finding XLII, R., p. 128, which we maintain is entirely inadequate, considers these claims together. (See below.)

CLAIM OF WALTER S. FIELD AND MADISON M. LINDLY.

The petition of Walter S. Field will be found on pages 76 to 82 of the Record; the original petition of Lindly appears on pages 67 and 68 of the Record, and his second petition on pages 68 to 73.

Before taking up a statement of the allegations of the petition of Field and the second petition of Lindly, which are very similar, we wish to call particular attention to a most serious error in Court of Claims' Finding XLII (Record, p. 128) in respect to the original petition filed by Lindly. In speaking of this petition the Court says:

"3. M. M. Lindly filed his first petition May 7, 1909, claiming then in his own right the sum of \$200 for services rendered and expenses incurred in behalf of the Mississippi Choctaws and gave his testimony in support of the same."

This is an entirely erroneous statement of his claim, and it is difficult to explain how such an error could have been made. The petition expressly states (Record, p. 68):

"3. That your petitioner was employed in the prosecution of said claims as an associate of Chester Howe, and in the course of such employment he rendered certain legal services and spent the sum of \$200.

"Wherefore, petitioner prays that he may become a party plaintiff in said suit by intervention, and that after due proof has been filed, he may have judgment against said defendants for the amounts so advanced as expenses, and for the reasonable value of the services rendered by him, as provided in said Acts of Congress."

The finding of the Court that Lindly at first claimed that he was only entitled to \$200 for services and expenses both,

is therefore clearly erroneous, and there is nothing inconsistent between the first and second petitions filed by Lindly, the second petition being only an amplification of the first.

Briefly stated, the petitions of Field and Lindly allege that Lindly secured from the three bands of Mississippi Choctaws a contract and power of attorney authorizing him to represent them in the prosecution of their claim to citizenship in the Choctaw Nation, and that subsequently (after "the Department of the Interior held that it had no authority to approve any contracts made with them," Finding VI, Record, p. 29), Lindly secured a large number of contracts from Individual Mississippi Choctaws to the same effect. That Field became associated with Lindly and co-operated with him, and that later they entered into a written agreement with Chester Howe by which they became associates of Howe's in the prosecution of the claim. That in the prosecution of said claim they prepared petitions and briefs and presented the same before the Dawes Commission, and made arguments before the said Commission. That they then instituted appeals in a number of cases from the decision of the Commission to the United States District Court, which appeals were made test cases, and they participated in the argument of said cases, and in one instance secured a decision favorable to the Indians. That thereafter they, in connection with their associate Howe, presented the claims of the Mississippi Choctaws to the Department of the Interior, the Committees of the Senate and House of Representatives, to the Commissioner of Indian Affairs and to individual Senators and Representatives, and that through their efforts they finally secured favorable legislation by Congress by means of which the Mississippi Choctaws were finally enrolled as citizens of the Choctaw Nation, and thereby secured very valuable allotments and property rights as members of said Nation. That in the prosecution of this work the said Field and Howe had expended a large sum of money, and that they

had not been reimbursed for the money expended and had not been compensated for services rendered. That in addition to the services rendered on behalf of all the Mississippi Choctaws as a class, they also rendered services to a large number of individual Indians in procuring their identification and final allotment.

The Court of Claims has found as to Lindly that, "In his second deposition he supports the allegations of his second petition" (Finding XLII, sec. 3, Record, p. 128), and that, "On February 19, 1912, John London filed his intervening petition herein and shortly thereafter gave his deposition in support thereof" (Finding XLII, sec. 5, Record, p. 128), and it also appears that Field testified in the case.

Notwithstanding this testimony and much other disinterested testimony in support of these petitions, the Court of Claims in its Findings announced May 17, 1915 (Record, p. 94 and p. 179), failed to make Findings of Fact covering the claims of these Appellants (Record, p. 179).

To this action of the Court the Appellants Field, Lindly and London duly excepted (Record, p. 94), and presented bills of exception for the Court to sign (Record, pp. 94 and 95).

These Appellants filed no motion for a new trial upon the Findings of Fact and conclusions of law, but rested their cases upon the exceptions filed. No argument was made on behalf of either Field or Lindly on February 1, 1916, to secure a new trial for them (see Record of Proceedings, Record, p. 95), nor was any brief filed at that time; yet the Court of its own motion, and although the membership of the Court had changed since the arguments on behalf of Lindly and Field had been made, saw fit to treat their application for the settlement of a bill of exceptions, as a motion for a new trial, and made what it is pleased to call Findings of Fact in regard to certain features of the claims of Field

and Lindly (Record, pp. 128-130, Finding XLII; Opinion, Record, p. 179).

These facts were called to the attention of this Court in a motion for a writ of *certiorari*, presented to the Court on April 9, 1917. We again ask the attention of the Court to this motion for a *certiorari*, and the brief filed in support of the same, as throwing light upon the case as now presented.

The Findings of Fact XLII, as thus ultimately handed down by the Court of Claims (Record, pp. 128-30), were, these Appellants think, entirely inadequate to present the issues of law really arising in the case, and for that reason they have filed and, on December 16, 1918, presented to this Court a motion to remand the case to the Court of Claims for additional Findings of Fact. In support of this motion a brief was filed fully discussing the law of the case as applicable to the claims of these Appellants, and pointing out in detail what these Appellants believe to be errors of law committed by the Court of Claims in respect to their claims. We respectfully call attention to pages 14 to 61 of that brief, and ask that the same be considered as a part of this brief upon the hearing on the merits.

The appellees contend that the band contracts upon which, in part only, the claims of Field, Lindly, Howe and London are based, could not have been operative and binding on the Mississippi Choctaws as a class for the reason, among others, that the Mississippi Choctaws were citizens of the State of Mississippi.

This raises the question, were the Mississippi Choctaws *Indians* under the power and control of the United States and subject to laws applicable to Indians, or were they full-fledged citizens of the United States, having the same status as white residents of Mississippi?

We submit that they were Indians in the fullest sense, and that when Congress recognized them as such by the progressive steps of legislation in the acts of February 11,

1897 (Finding XV, R., p. 102); June 7, 1897 (Finding XVI, R., p. 103); June 28, 1898 (Finding XVIII, R., p. 104); May 31, 1900 (Finding XXIII, R., p. 109), and July 1, 1902 (Finding XXIX, R., p. 112), the courts are absolutely bound by this legislative assertion of their status:

“When and for how long an Indian community shall be recognized and dealt with as a dependent tribe are questions to be determined by Congress and not by the courts.”

U. S. vs. Sandoval, 231 U. S. 28.

Congress can determine when this guardianship shall cease, and State laws have no force or effect.

U. S. vs. Rickert, 188 U. S. 432;

Tiger vs. Investment Co., 221 U. S. 280;

The Kansas Indians, 5 Wall. 737.

“In determining what is essential to the protection of the Indians, Congress is invested with a wide discretion, and its action, unless purely arbitrary, must be accepted and given full effect by the courts.”

Perrin vs. U. S., 232 U. S. 478-488;

Johnson vs. Gearlds, 234 U. S. 422;

Hickman vs. U. S., 224 U. S. 445.

It is immaterial whether the Department of the Interior, after the treaty of 1830, ceased to exercise jurisdiction over them, the neglect of the department could not change their status. Their status was with Congress.

The treaty of 1830 did not in itself pretend to make any individual Choctaw a citizen. It at most only opened a way by which they might become citizens. There is no finding in this case that any of the defendant Mississippi Choctaws or their ancestors ever took the steps necessary to make them citizens, and the action of Congress, above referred to, has estopped this Court from assuming that they ceased to be Indians.

Moreover, it is historically true, as fully established by the facts set forth in the case of the Choctaw Nation vs. United States, 119 U. S. 1, that the United States dealt with the Choctaw Nation as including the Choctaw Indians residing in Mississippi. Many of the questions involved in that litigation directly related to these Mississippi Indians.

The decisions of the Supreme Court, above cited, make it certain that the acts of the State of Mississippi could not change or in any way affect the status of the Indians within the State.

The various acts of the Legislature of Mississippi and the provisions of the State Constitution, as set forth in Finding V, R., p. 98, are, therefore, entirely irrelevant and immaterial. They are not even historically important. They were absolute nullities.

We also respectfully submit that these Indians did not become citizens of the United States under Section 6 of the act of February 8, 1887 (24 Stat. 390), or by the act of March 3, 1901 (31 Stat. 1447), as set forth in said Finding V.

The act of February 8, 1887, was not intended to affect *bodies* of Indians. It distinctly treats of individual Indians, who by some independent act of their own, have *left* their Indian tribe and associations, and have gone out among the whites and taken up their ways and customs with the intention of becoming citizens of the States. Its purpose was to give vent to the individual aspiration to break away from barbarism and become civilized.

No such conditions existed among the Mississippi Choctaws. To begin with, there were some three to five thousand of them. They did not take up civilized life separate and apart from their tribe, for they continued to live just where they had been living, and just as the other members of the nation had been living. They remained behind in Mississippi for this expressed purpose. The only possible difference

was that they, perhaps, did not maintain a separate formal tribal organization, such as was maintained by the nation proper. But this, instead of being an evidence of civilization, is rather the reverse. That they did not openly maintain the old tribal organization, may be easily accounted for by the hostile legislation of the State, and the failure of the United States to afford the proper protection.

No. 127.

CLAIM OF J. J. BECKHAM.

The petition in this case will be found on pages 62 to 67 of the Record.

The allegations of the petition are as follows:

That he was an associate of J. S. Bounds and William N. Vernon, and that under contracts of employment he removed a considerable number of Mississippi Choctaws to the Indian Territory; secured locations for them; assisted them in their identification before the Dawes Commission, and afforded them material assistance while perfecting their claim to citizenship in the Choctaw Nation, without which assistance their claims would have failed. He further states that he expended \$6,000 in their behalf and names the individuals he assisted.

Most of the essential allegations are sustained by the Court of Claims in general terms in its Finding XL (Record, pp. 126 and 127), but said Finding does not show whether or not Beckham was an associate of J. S. Bounds and William N. Vernon.

The Court of Claims held, as in the similar case of J. S. Bounds, No. 124 above, that no judgment could be entered

for services of this character rendered individual Indians, nor for expenses incurred on behalf of Individual Indians.

For reasons more particularly set forth above in connection with the claim of J. S. Bounds we submit that this was error.

No. 128.

CLAIM OF WILLIAM N. VERNON.

The petition in this case will be found on pages 31 to 39 of the Record.

The allegations of the petition are sustained by the Court of Claims in general terms in its Finding XXXVII (Record, pages 122 and 127), and are substantially as follows:

That under contracts of employment he removed some 60 Mississippi Choctaws from Mississippi to Indian Territory; that he paid all of the expenses incident to their removal, including the cost of their subsistence; upon their arrival in Indian Territory, provided them with shelter and other necessities, and placed them in possession of lands, and further assisted them until their allotments were obtained. The names of the Indians thus assisted are not found by the Court, and the Findings are in other respects incomplete.

The Court of Claims held, as in the similar case of J. S. Bounds, No. 124 above, that no judgment could be entered for services of this character rendered under contracts of employment by individual Indians, nor for expenses incurred on behalf of individual Indians.

For reasons more particularly set forth above in connection with the claim of J. S. Bounds, we submit that this was error.

CLAIM OF KATIE A. HOWE, EXECUTRIX OF CHESTER HOWE.

The petition of Mrs. Howe will be found on pages 42 to 50 of the Record. Later she filed an amended petition, a part of which was printed in the Record on pages 50 and 51. Through some error the whole of this petition was not printed in the Record, but the full petition has been printed as an "Appendix A" to the motion of this appellant and others, to remand the case to the Court of Claims for additional findings of fact, which motion was presented to this Court on December 16, 1918. We ask the attention of the Court to this petition as there set forth in full.

The allegations of these several petitions are substantially as follows:

That Howe had been employed on behalf of the several Bands of Mississippi Choctaws under the band contract entered into with said bands through M. M. Lindly as set forth in the testimony of Walter S. Field, as well as through a large number of individual contracts including all the contracts taken in the names of J. E. Arnold, L. P. Hudson, and the firm of Hudson and Arnold, an interest in which last mentioned contracts had been assigned to him. The number of these contracts does not specifically appear but the Court has found (Finding XXXV, Sec. 9, Record, p. 120) that Arnold alone secured contracts with approximately 668 Mississippi Choctaw applicants, and it appears that contracts were also obtained in the name of Hudson, and of the firm of Hudson and Arnold.

The petitions further allege that Howe rendered legal service to the Mississippi Choctaws before the Dawes Commission, the Courts of Indian Territory, before the Interior Department and before Congress, and that he assisted in the identification, location, removal and subsistence of individual Mississippi Choctaws.

The allegations of these petitions were supported by testimony, and the Court of Claims in Finding XXXIII (Record, p. 116), has found that Howe was actively engaged in pressing the claims of Mississippi Choctaws upon individual Representatives and Senators, before the Sub-committee on Indian Affairs of the House, the officials of the Indian Office and the Secretary of the Interior, but the Finding is entirely incomplete and unsatisfactory as to the full nature and extent of the services rendered by him, though in the opinion, on page 178 of the Record, the Courts says that he advocated the cause of the Mississippi Choctaws "*with great faithfulness and signal ability.*"

This statement by the Court makes it perfectly obvious that the Finding does not fully set forth the services actually rendered by Howe. Evidently the Court was of the opinion that in view of their interpretation of the Acts of reference it was not incumbent upon them to make full and complete findings of fact.

The arguments set forth above in connection with the cases of J. S. Bounds, No. 124, and Walter S. Field and Madison M. Lindly, No. 126, are largely applicable to this case, and we ask the Court to consider these cases together.

CONCLUSION.

In the opinion of the Court of Claims (Record, p. 167) it is suggested as mitigating against the rights of the claimants that they sought the Indians rather than that the Indians sought them. We submit this awakening of these poor, ignorant Indians to a knowledge of their rights should be the basis for an additional allowance, rather than for criticism. But for some reason the Court of Claims has apparently viewed with suspicion and distrust every act of the claimants, however innocent, and however beneficial it may

have been to the Indians. We do not believe the facts as found by the Court, incomplete and insufficient as they are, justify this attitude.

The Court further suggests that it is impossible to segregate the services of these claimants and show to what extent they did in fact influence Congress to pass this legislation. This does not preclude a recovery. It is of course impossible to say what particular thing influenced Congress to enact this legislation. In the very nature of things this cannot be done. But Congress knew that, yet it referred this case to the Court to decide, just as a Court or jury has to pass upon the value of the services of an attorney in arguing and conducting a case before a Court. In such case the Court and jury do not inquire as to the exact psychological effect of the lawyer's argument on the minds of the Court and jury. They know that is impossible of exact ascertainment, but they do consider the labor involved and the ultimate results of the litigation. That is all Congress expected and all we are asking in this case.

The law does not require the impossible. The Court is required to accept things as they are, and to use its knowledge of the affairs of men, conducted according to the natural order of things, and apply their wisdom to working out a judgment that will be fair and just as between man and man, and which will carry into effect the plainly expressed intention of Congress that Howe, Winton and their associates should be paid a reasonable compensation for their years of toil. It cannot be a case of exact computation. It should be a case of liberal estimation.

In this connection we would also call attention to the contention of the appellees that the beneficial results obtained were produced by the efforts of Representative (now Senator) Williams. If it is true that the attorneys cannot show that their efforts secured the legislation it must be equally impossible to show that the efforts of Senator Williams accomplished that result. Mr. Williams was but one of the

numerous members of the House of Representatives, and to permit him to say, or to have others say for him, that he *alone* secured this legislation, would be as absurd as to permit a single juror to say that he alone was responsible for a given verdict; that he made up his mind without regard to the argument of the attorneys, and that he, and not the attorneys, convinced the other eleven members of the jury that the plaintiff was entitled to a verdict.

When it is further considered that the action of the Senate had also to be secured, it is still more apparent how baseless is this argument of the defense. Certainly, Congress, when it enacted these acts of reference, was unconscious of the fact that its former action had been controlled by Mr. Williams.

There was no person in such a favorable position to form an accurate judgment as to whose efforts were the effective force in securing this legislation as Commissioner of Indian Affairs, W. A. Jones. During all this agitation he was Commissioner, and had this matter directly under his charge and observation. He had wide experience in these matters and knew, probably better than any other man, whose efforts were most potent in securing this legislation. His testimony was taken and yet the Findings of the Court do not reveal in any way his views of the case.

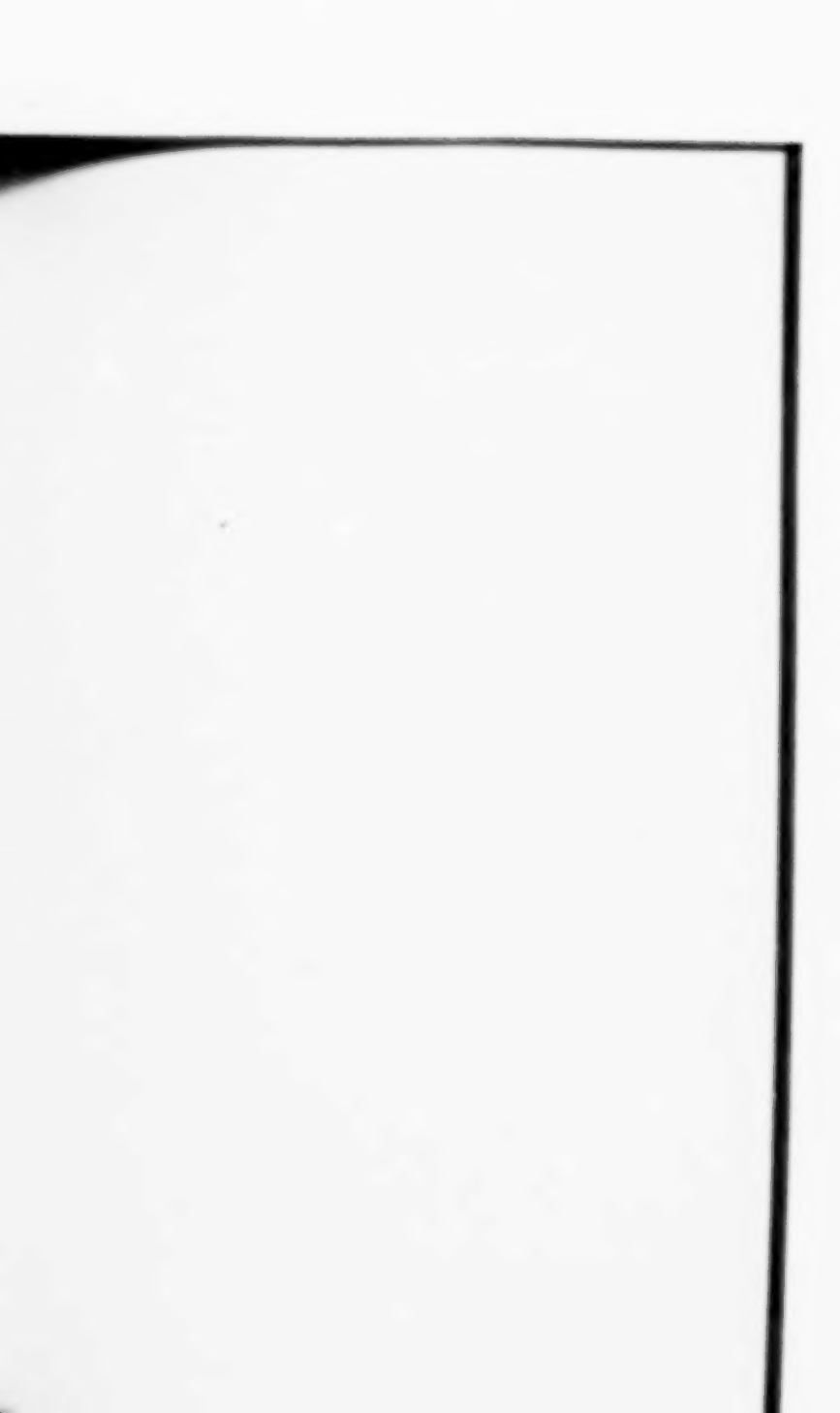
The Court of Claims has been zealous and technical in upholding the contentions of the appellees. We do not believe Congress intended the Acts of reference to be construed with severe technicality, for those Acts in terms direct the Court to render judgment, *on the principle of quantum meruit, for such sum "as may appear equitably or justly due."*

Yet the Court in its opinion of January 29, 1917, on page 213 of the Record, says:

"The Court in finding the facts and in reaching its conclusions of law upon the issues involved in the case has adhered with inflexible rigidity to the principles laid down in Trist vs. Child."

We respectfully submit that the Court of Claims in other respects has adhered with equally inflexible rigidity to technicalities, not contemplated by the Acts of reference, and thereby has done a great injustice to these appellants. For no matter what technical objections may be raised against their claims, no one can seriously contend that the efforts of these appellants were not of vital and material benefit to the Mississippi Choctaws, or that they are not equitably and justly entitled to compensation for the services they in fact rendered. We again assert our conviction that it was not the intention of Congress that this should be done.

GUION MILLER,
Attorney for Appellants.



In the Supreme Court of the United States.

OCTOBER TERM, 1916.

JOHN LONDON, WALTER S. FIELD,
Madison M. Lindly, and Katie
A. Howe, executrix, interven-
ors, appellants,

v.

JACK AMOS AND OTHERS, KNOWN
as the Mississippi Choctaws.

Nos. 926, 927, 930.

APPEALS FROM THE COURT OF CLAIMS.

BRIEF FOR APPELLEES IN OPPOSITION TO APPELLANTS' MOTION FOR WRIT OF CERTIORARI.

Appellants move for a writ of certiorari requiring the Court of Claims to certify as part of the record:

1. Tentative findings of fact and opinion of the court filed December 7, 1914.

2. Objections and exceptions of Walter S. Field and Madison M. Lindly, filed January 21, 1915, to said tentative findings of fact and opinion filed December 7, 1914.

3. Finding XLII relating to the claims of Walter S. Field and Madison M. Lindly, and Finding XLV relating to the claims of John London and others, and

the conclusion of law filed by the Court of Claims May 17, 1915.

4. Exceptions of Walter S. Field and Madison M. Lindly filed August 16, 1915, to the findings of fact and conclusion of law and opinion filed by said court May 17, 1915, with correction of clerical error in said exceptions as set forth November 29, 1915.

5. Bill of exceptions on behalf of Walter S. Field and Madison M. Lindly filed August 16, 1915.

6. Certain statement of errors of fact and argument as to errors of law contained in a motion for a new trial filed on behalf of Walter S. Field on November 28, 1916.

7. The names of the different judges constituting the Court of Claims who sat at hearings in February, 1915, February, 1916, and November 26, 1916.

Appellees submit that the motion should be disallowed for the reasons:

1. That the Court of Claims is required to certify as part of the record here only its ultimate findings of fact, and not tentative or incomplete findings of fact.

2. That every fact material to the final disposition of these cases has been heretofore acted upon by the Court of Claims, and their action thereon is fully disclosed by the record as it now stands.

STATEMENT.

Suit was filed by the estate of Charles F. Winton, deceased, and others *v.* Jack Amos and others, known as the Mississippi Choctaws, in the Court of Claims

on October 11, 1906, under a special act of Congress approved April 26, 1906, 34 Stat. 140, which gave said court jurisdiction to adjudicate the claims of the estate of Charles F. Winton, deceased, his associates and assigns, against the Mississippi Choctaws for services rendered and expenses incurred in the matter of their claims to citizenship in the Choctaw Nation upon the principle of *quantum meruit*.

The act of April 26, 1906, was amended by the act of May 29, 1908, 35 Stat. 457, giving the Court of Claims jurisdiction to adjudicate the claims of William N. Vernon, J. S. Bounds, and Chester Howe, and their associates or assigns, against the Mississippi Choctaws for services rendered and expenses incurred in the matter of the claims of the Mississippi Choctaws to citizenship in the Choctaw Nation upon the principle of *quantum meruit*. It further provided that "The said William N. Vernon, J. S. Bounds, and Chester Howe are hereby authorized to intervene in the suit instituted in said court under the provisions of section 9 of the act of April 26, 1906, in behalf of the estate of Charles F. Winton, deceased."

Under the jurisdictional act, as amended, Vernon, Bounds, and Howe filed intervening suits, and the material facts in the claim of Howe were found by the court in its ultimate Finding of Fact No. XXXIII. (Findings of May 29, 1916, p. 19.)

Thereafter, at different dates, intervening suits were filed in said court under the amended jurisdictional act by Madison M. Lindly, Walter S. Field,

and John London, claiming the right to intervene as associates of Chester Howe.

Prior to the first hearing of the Winton case in the Court of Claims plaintiffs Lindly and Field, on June 13, 1913, requested said court to find, as part of their findings of fact, an alleged contract of association in writing between the said Howe, Lindly, and Field to prosecute the claims of Mississippi Choctaws to citizenship in the Choctaw Nation; an alleged express contract of employment by three bands of Mississippi Choctaws, claimed to have been in writing, but subsequently lost; certain contracts made with individual Mississippi Choctaws by James E. Arnold and Louis P. Hudson as employees of said Howe, Lindly, and Field; and certain alleged services rendered, in pursuance of said contracts, to the Mississippi Choctaws in securing legislation by which they obtained their rights as citizens of the Choctaw Nation.

The court refused in its tentative findings of fact of December 7, 1914, its intermediate findings of fact of May 17, 1915, and its ultimate findings of fact of May 29, 1916, to find the foregoing facts, upon the ground that they were not sustained to the satisfaction of the court by the evidence.

Plaintiffs Lindly and Field filed exceptions and objections, a bill of exceptions, and a motion for a new trial on January 21, 1915, August 16, 1915, and November 26, 1916, respectively, to the refusal of the court to find the facts requested.

On May 29, 1916, the court found the ultimate facts in the claims of Arnold and Hudson (Finding No. XXXIX).

The objections and exceptions filed by Plaintiffs Lindly and Field on January 21, 1915, August 16, 1915, and bill of exceptions filed August 16, 1915, and motion for new trial filed by Field November 26, 1916, requested for certification as part of the record here, were all directed to the refusal of the Court of Claims (Finding XLII, p. 30) to find the facts as requested by the said plaintiffs prior to the first hearing of the Winton case.

ARGUMENT.

An inspection of ultimate Finding No. XLII of the Court of Claims will show conclusively that every material fact requested by appellants was considered and acted upon by the court.

There is no rule of this court which requires or permits the Court of Claims to certify to this court as part of a record tentative or incomplete findings of fact, such as these were, or objections and exceptions to the court's findings of fact, or arguments either of fact or law upon motions for new trials. The Court of Claims is only required to certify, as part of the record, its ultimate finding of fact and conclusion of law after all motions for new trials and amendments of findings of fact have been disposed of.

This court has frequently declared that it will not go behind the findings of fact of the Court of Claims (*Sisseton and Wahpeton Indians*, 108 U. S. 561, 566),

but if that court has failed to pass upon any specific facts requested to be found, material to the decision of the case, this court, on proper motion before trial, may direct that court to determine whether or not such facts are sustained by the evidence. (*United States v. Adams*, 9 Wall. 661; *United States v. Driscoll*, 131 U. S. Appendix clix.; *Ripley v. United States*, 220 U. S. 491; *id.*, 222 U. S. 141.)

Not one material fact has been pointed out by appellants for certification, or can be pointed out, which the Court of Claims has not passed upon in its ultimate finding of fact. It would not assist the court or help appellants if all of the voluminous matters specified in the motion were certified as requested, but would tend to burden and confuse the record.

It may well be doubted whether the Court of Claims, after having found that no association existed between appellants and Chester Howe, was required to make any further findings of fact. Such additional facts would be necessarily immaterial. Indeed, the amendatory act of May 29, 1908, *supra*, under the rule laid down in *Robertson v. Gordon et al.*, 226 U. S. 311, 317, should limit intervention in the Winton suit to Vernon, Bounds, and Howe named in the act.

The request that this court require the Court of Claims to certify as part of the record the names of the different judges who sat at the several hearings of the Winton case is clearly improper. The validity

of the ultimate findings of fact of the Court of Claims is not affected by any change in the personnel of that court during the progress of a suit. The request, we believe, carries an insinuation which should be its own answer.

JOHN W. DAVIS,
Solicitor General.

HUSTON THOMPSON,
Assistant Attorney General.

APRIL, 1917.

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Nos. 124, 125, 126, 127, 128, 129.

In the Supreme Court of the United States.

OCTOBER TERM, 1918.

J. S. BOUNDS, ATTORNEY IN FACT FOR T. A. BOUNDS,
JOHN LONDON, WALTER S. FIELD, MADISON M.
LINDLY, J. J. BECKHAM, WILLIAM N. VERNON,
AND KATIE A. HOWE, EXECUTRIX OF THE ESTATE
OF CHESTER HOWE, INTERVENORS, APPELLANTS.

v.

JACK AMOS AND OTHERS, KNOWN AS MISSISSIPPI
CHOCTAWS.

APPEAL FROM THE COURT OF CLAIMS.

**BRIEF OF APPELLEES IN OPPOSITION TO APPELLANTS'
MOTION TO REMAND.**

STATEMENT.

Appellants move the court to remand the record in this case to the Court of Claims for additional findings of fact and allege as the reasons therefor that the said court failed to find:

1. Any association between Chester Howe, deceased, and Walter S. Field and Madison M. Lindly to prosecute the claims of the Mississippi Choctaws to citizenship in the Choctaw Nation.

2. Any contract or agreement of employment of said Field, Lindly, and Howe by the Mississippi Choctaws, either as bands or individuals, to prosecute said claims.

3. That committees of Congress, the Dawes Commission, the Interior Department, and the Indian Office, recognized the said Field, Lindly and Howe as attorneys of the Mississippi Choctaws engaged in the prosecution of such claims.

4. That said Field, Lindly and Howe performed any services for the Mississippi Choctaws resulting in their enrollment as citizens of the Choctaw Nation, and in their allotment of Choctaw-Chickasaw tribal lands.

5. That John London was associated with said Field, Lindly and Howe and rendered services to individual Mississippi Choctaws in securing their identification and enrollment as citizens of the Choctaw Nation, and in securing contracts of employment by said Mississippi Choctaws in the matter of their claims to citizenship in the Choctaw Nation.

6. That said Lindly and Field rendered assistance in removing individual Mississippi Choctaws from Mississippi to the Indian Territory and maintaining them after removal.

7. The names of individual Mississippi Choctaws assisted by T. A. Bounds, J. J. Beckham and William N. Vernon, the amounts expended for each Indian and the value of the services rendered to each.

8. The total value of the property rights secured to the Mississippi Choctaws as a result of the prose-

cution of their claim to citizenship in the Choctaw Nation.

Appellees submit the motion should be denied for the reasons:

1. That every fact material to the final disposition of these cases has been heretofore found by the Court of Claims, and their action thereon is fully disclosed by the record as it now stands (Court's Findings Nos. XXXIII, XXXIV, XXXV, XXXVI, XXXVII, XXXIX, XL, XLII).

2. That the appellants Field, Lindly and Howe have heretofore, to wit, on March 9, 1917, filed a motion for certiorari requiring the Court of Claims to certify, among other things, as part of the record here:

(a) Exceptions of said Field and Lindly filed October 15, 1915, to the findings of fact, conclusion of law and opinion of the said court of May 17, 1915, with corrections of clerical error in said exceptions as set forth November 29, 1915.

(b) Bill of Exceptions on behalf of said Field and Lindly filed August 16, 1915.

(c) Certain statement of errors of fact and argument as to errors of law contained in a motion for a new trial filed on behalf of said Field on November 28, 1916. (See briefs of appellants and appellees on this motion.) The motion was denied by the court on April 16, 1917.

(d) The appellants statement that the facts on which they base their motion for remand are con-

tained in the findings of fact presented by them to the Court of Claims (Motion p. 11).

ARGUMENT.

Efforts were made in the court below by appellants Lindly, Field and London to establish an association with Chester Howe, apparently to meet the requirements of the jurisdictional act of May 29, 1908, which authorized Vernon, Bounds and Howe to sue in the Court of Claims for themselves, associates and assigns, but said appellants appear to have overlooked another provision of the act that authorized only Vernon, Bounds and Howe to intervene in the Winton suit (Court's Finding No. II, Rec. 96, 97). If the act had not contained the latter provision, it is doubtful whether the said appellants were authorized to intervene if their association with Howe had been established. (*Robertson v. Gordon*, 226 U. S., 311, 317.)

Appellants, Lindly, Field and London, attempted by every means in their power to establish their employment by the Mississippi Choctaws.

The matters upon which said appellants base their motion for remand of the record were admittedly abstracted from those parts of the record in the Court of Claims which they moved this court to require the lower court by certiorari to certify as part of the record here, and which this court refused to do on April 16, 1917.

If the grounds for the motion for the writ of certiorari had been sufficient, the court would have

remanded the record for additional findings. This court has frequently said that it will not go into the evidence upon which the findings of fact of the lower court is based, but if that court has failed to act on material facts presented to it, the court will, if the facts are of sufficient importance, remand the record and require the lower court to determine whether or not such facts are sustained by the evidence. (*United States v. Adams*, 9 Wall., 661; *United States v. Driscoll*, 131 U. S. Appendix CLIX; *Ripley v. United States*, 220 U. S., 491; *Id.*, 222, U. S. 141.)

If the facts were considered insufficient to remand the record on the motion for certiorari, they would seem to be insufficient to remand the record on the present motion.

This leaves that part of the motion relating to the claims of Bounds, Beckham and Vernon against certain individual Mississippi Choctaws on their individual contracts for removal and subsistence to be considered. As to Beckham, he was not authorized to intervene by the jurisdictional act (Rec. 96, Finding II), and has shown no association with any person authorized to sue. As to these appellants, the Court of Claims has found all of the material facts sustained by the evidence, and this is apparent from the findings (Findings XXXVI, XXXVII and XL, Rec. 121, 122, 126).

It is true there were lists of names of Indians attached to the petition of Bound, and a statement showing the expenditure of certain sums of money, but nothing to show the amounts expended on or for

each Indian (Rec. 57-61), and the same statement applies to the petition of Beckham (Rec. 66, 67). There appears to have been an attempt by Vernon in the exhibits attached to his petition to have itemized the amounts expended (Rec. 36-41), but the court found that the evidence produced in support of the petition did not satisfactorily show the amount due from such Indians (Rec. 123). As to the claims of Bounds and Beckham, the evidence was as indefinite as to the expenditures for individual Indians as the statements appended to their respective petitions. The lower court, therefore, in these three claims made the only findings they could have made from the evidence.

The appellants have requested the court to go into the evidence filed in the court below, and have appended to their brief on this motion two depositions, one of W. A. Jones (pp. 65-105) and the other of George A. Ward (pp. 105-124), with the evident purpose of inducing the court to go into the questions of whether there was an association between Chester Howe and Lindly and Field, and whether there was a band contract between the Mississippi Choctaws and Madison M. Lindly.

There were several thousand pages of evidence taken under the rules of the Court of Claims, a large part of which related to the alleged association and the so-called band contract. The lower court considered all of this evidence, and found that there was no such association and no band contract (Finding XLII, Rec. 128-130). Howe in his original petition,

prepared by himself and filed on August 22, 1908, a short time before his death, did not refer to any such association between himself and Lindly and Field, and claimed employment under no band contract, but only under certain individual contracts with Mississippi Choctaws taken by Louis P. Hudson. This petition was inadvertently omitted from the record (see Rec. Index iii and p. 42) and has been reprinted and attached to this brief as Appendix A.

Howe's original intervening petition was afterwards finally amended by his executors so as to claim under "a certain band contract referred to in the record testimony of the intervenor, Walter S. Field" (Rec. 50, 51).

Lindly in his petition filed May 7, 1909, claimed no agreement or association between Howe, Field, and himself (Rec. 67, 68). In his petition, however, filed May 17, 1909, he claimed such an agreement and greatly amplified his claim, but still he made no claim under a band contract with the Mississippi Choctaws (Rec. 68, 75).

Field, after acting as attorney for Lindly, on June 9, 1910, over three and a half years after the institution of the suit, filed a petition in his own behalf, claiming an agreement or association with Howe and Lindly, and for the first time a band contract with the Mississippi Choctaws (Rec. 76-82). There could have been no such band contract as the law of Mississippi at that time prohibited such an organization (Court's Finding No. V).

Mr. W. A. Jones in a previous deposition said:

I think that at one time Chester Howe either presented *an application or discussed with me the advisability of presenting an application for leave to make a contract with some organization of the Mississippi Choctaws in Mississippi*. At this time he had two or three informal contracts with some town or county organization, or bands of Choctaws in that State, and seemed desirous of putting them into such form that they could be approved by the office. The services contemplated did not seem to be such as came under the United States statute, and I think *he gave up trying to take contract with the idea of having it approved and finally concluded to take individual contracts and rely upon them*. (Italics ours.) (Rec. 2983, 2984.)

This deposition was taken on interrogatories which were agreed to by the Government. It was afterwards discovered and established by proof that Walter S. Field, who was at that time acting as attorney for Lindly, in whose behalf the deposition was taken, wrote all of the answers to the interrogatories and they were signed by Mr. Jones as sent to him. The deposition was taken before Field filed his intervening petition and differs very much from the statement therein as to the said band contract.

There was much testimony of record in the court below tending to show that the alleged association between Howe, Field, and Lindly, and the so-called band contract never had any existence except in the

imagination of the appellants, and that there had been undue influence used in attempting to induce certain witnesses to testify as to their existence.

Concerning this testimony the court's attention is called to the extremely severe strictures of the Court of Claims on the conduct of the appellants Lindly, Field, and London. These statements of the lower court also show that the evidence was examined with the greatest care on account of these very facts (Rec. 179-182).

For the foregoing reasons, it is respectfully submitted that the motion should be denied.

ALEX. C. KING,

Solicitor General.

HUSTON THOMPSON,

Assistant Attorney General.

APPENDIX A.

In the Court of Claims of the United States.

THE ESTATE OF CHARLES F. WINTON, DECEASED, AND OTHERS, vs. JACK AMOS AND OTHERS, KNOWN AS THE "MISSISSIPPI CHOCTAWS."	}	No. 29,821.
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**INTERVENTION PETITION OF CHESTER HOWE, AND
HIS ASSOCIATES.**

To the Honorable Chief Justice and Judges of the
Court of Claims.

Your Petitioner respectfully represents:

1. That he is a citizen of the United States, residing at Washington, D. C., and files this petition in his own right and on behalf of those associated with him, and that he is the identical Chester Howe, named and referred to in Section 27, of the Act of Congress of May 29th, 1908 (Public 156), said Act being as follows:

"Sec. 27. That the Court of Claims is hereby authorized and directed to hear, consider and adjudicate the claims against the Mississippi Choctaws of William N. Vernon, J. C. Bounds and Chester Howe, their associates or assigns, for services rendered and expenses incurred in the matter of the claims of the Mississippi Choctaws to citizenship in

the Choctaw Nation and to render judgment thereon on the principal of quantum meruit in such amount or amounts as may appear equitable and justly due therefor, which judgment, if any, shall be paid from the funds now or hereafter *due such Choctaws or individuals* by the United States. That the said William N. Vernon, J. S. Bounds, and Chester Howe are hereby authorized to intervene in the suit instituted in said court under the provisions of section nine of the act of April twenty-sixth, nineteen hundred and six, in behalf of the estate of Charles F. Winton, deceased: Provided, that the evidence of the interveners shall be *immediately submitted*: And provided further, That the lands allotted to the said Mississippi Choctaws are hereby declared subject to a lien to the extent of the claims of the said Winton and the other plaintiffs authorized by Congress to sue the said defendants, subject to the final judgment of the Court of Claims in the said case. Notice of such suit or intervention shall be served on the governor of the Choctaw Nation, and the Attorney General shall appear and defend the said suit on behalf of the said Choctaws."

II. That your petitioner is and has been for many years an attorney and counsellor at law, and from the years 1889 to 1896 was a resident of Oklahoma and a practitioner therein. That in the year 1896 he moved his office and place of practice to Washington, D. C., and since that time has been a practitioner before the courts and departments of the United States Government in the District of Columbia.

III. That prior to his removal to Washington, and thereafter, his practice has consisted largely of the presentation of questions involving the rights of the Indian people and tribes before the executive officers of the United States, before Congress, and the courts, and during the debates preceding the passage of the act of June 28th, 1898, commonly known as the Curtis Act, a portion of which act included what is known as the "Atoka Agreement" between the Choctaw and Chickasaw Indians of the Indian Territory and the United States, he was called upon for an opinion, and thus had his attention directed to the rights, both of disenrolled, or unenrolled, resident and nonresident, Choctaw Indians in and to the lands and funds affected by the proposed legislation; and immediately after the passage of the act of June 28, 1898, his attention was again directed to this matter and to the intent of Congress as expressed in the treaty of September 8, 1830, between the Choctaw Nation and the United States, in the patent issued thereunder, particularly by article 13 of the treaty of April 28, 1866, and the recent enactments of June 28, 1898, and he came to believe as to a matter of law that nonresident Choctaw Indians, i. e., those Indians not residing in the Choctaw Nation in the Indian Territory, who were in law and in fact Choctaw Indians remaining in Mississippi or residing elsewhere, who were parties to the treaty of 1830 were entitled to participate in said lands and moneys, provided they asserted such rights by removing to the Nation.

IV. That thereupon your petitioner sought by correspondence and by sending to Mississippi to ascertain the true condition of the Choctaw Indians residing in the State and did ascertain the facts to be that

there was a large number of Choctaws, many of whom spoke nothing but the Choctaw language, all of whom were indigent, who had apparently been overlooked in the proposed division of the property of the Choctaw Nation, and that said Indians were clearly entitled, provided they removed to the Indian Territory, to an estate of great value to them and to each of them.

V. That he was familiar with the legislation pertaining to the identification of Mississippi Choctaws, the first action taken thereunder being by a roll which was prepared and known as the "McKennon Roll," and that he thereupon made arrangements to secure the cooperation of a number of persons both in the Choctaw Nation and in Mississippi to assist in securing the identification of such Mississippi Choctaws as might desire to remove from Mississippi to the Choctaw Nation, and to render practical the work then begun by securing land for them in the Nation after said identification had been completed.

VI. That the condition of the Choctaws in Mississippi at this time was one of abject poverty; they being tenant farmers under the tenant laws of the State, and under said laws no laborer or tenant could leave the State without paying any debt due to the landlord, and any person inducing said tenant to leave without payment was guilty of a misdemeanor, it being a fact that from year to year there was a general indebtedness carried on the books of the landlord against the tenant.

Further ascertaining that these people had neither clothing, means or experience in traveling sufficient to permit them to emigrate as individuals or as a body (except in very rare instances), and that any assistance offered them must provide not only the necessary means, but the necessary legal assistance as well.

That the condition in the Choctaw Nation was that all or nearly all of the good agricultural land was held or claimed by some person or persons under a claim of right of possession, based upon improvements theretofore made thereon, in some cases extensive and in others slight; that the land had all been or was to be appraised and graded by the officers of the Commission to the Five Civilized Tribes, commonly known as the Dawes Commission, and when so appraised the improvements thereon were described and the reputed owner mentioned; that this reputed owner had a prior right of selection for both himself and his family, and while there was a provision in the law relative to "excess holding" it was in practice impossible to obtain lands for any number of persons possessing any reasonable value without first purchasing those so-called "improvement rights;" that these rights were transferred by bills of sale, which were recognized by the allotting officers; that it was further necessary to ascertain the description of the lands by survey or otherwise, and that the expenses incurred were certain to be large and the labor great.

VII. That under agreement as set forth in paragraph five, L. P. Hudson went to Mississippi, to assist in securing the identification of the Mississippi Choctaws, and did so assist the officers of the United States, by furnishing the necessary money to pay railroad fare, buy necessary clothing, and furnish the necessary sustenance required by these people, in order that they might travel from their homes, sometimes a long distance, to points where the officers of the United States were receiving testimony, and identifying such Mississippi Choctaws as were entitled under the law, and that the performance of such

labor, each and every act done, was in compliance with a contract formerly obtained, which provided for the removal of these parties to the Choctaw Nation, the payment of expenses and protection of the interests of said parties, every act being in compliance with existing rights and with subsequently enacted laws, that said contracts taken by Hudson and his associates were all taken under the agreement mentioned.

VIII. That the identification of the Mississippi Choctaws residing in the old Choctaw Country in Mississippi, was by such means, carried to a successful conclusion, whereupon your petitioner and his associates were at a necessity of advancing large sums of money to provide for the removal of the persons so identified to the Choctaw Nation, where, under the law, they were entitled to receive an estate in land and money, said removal being a condition precedent thereto, and that whereupon your petitioner entered into negotiations with a number of persons, presenting as a basis the rights of the Indians to the estate, the necessity of the removal, the necessity of providing rights of possession after the removal, together with sustenance, etc., and the certainty of remuneration under the individual contract taken; that for this purpose he went to the city of Chicago, and there entered into an agreement with men of means under which the sum of one hundred thousand dollars was pledged, and further sums were agreed to be advanced; provided, his statement as to the law and facts were found correct; that the statements of the law were investigated by the counsel of the Chicago Title & Trust Company and approved; that all the statements of facts were found correct, but that the assistance was refused upon the grounds that the Officers of the Department of

the Interior, stating as a matter of fact that they would not recognize or approve, but on the contrary would disapprove, any collection under the contracts from the Mississippi Choctaws; That thereupon your petitioner went to Pittsburg, Pennsylvania, and arranged for a like sum of money, which was subsequently withdrawn for the same reason; that your petitioner negotiated with other parties, spending time and money, and that his associates also entered into negotiations with many other persons, spending both time and money, all in the interest of the Mississippi Choctaws.

IX. That the rights of the Mississippi Choctaws up to this time had been held in abeyance, and in 1902 an agreement was prepared and submitted which failed in any way to provide for affirmative relief for these people, and that said agreement had received the approval of the Joint Committee of the Senate and House of Representatives of the United States, and was ready for submission to the Separate Committee of the Senate and House, when your petitioner acting under his contract, secured a hearing before the House Committee on Indian Affairs and presented the rights and equities of the people, representing them as Attorney at such hearing, and as a result of the arguments then made, which extended over a time of three committee meetings, and at which presentation the attorneys for the Choctaw Nation were present and opposing, a committee report was adopted which was embodied in and is a part of the Act of July 1, 1902, under which the full-blood Mississippi Choctaws are enrolled provided they remove to the Choctaw Nation in the Indian Territory, subject to such other limitations as are contained in said Act of July 1, 1902:

X. Thereafter, your petitioner went to Cleveland, Ohio, and there secured the organization of a Corporation, known as the Choctaw Improvement and Development Company, said corporation being organized among other things for the purpose of furnishing the funds and removing Mississippi Choctaws from the State of Mississippi to the Choctaw Nation, in the Indian Territory, the capital stock of said corporation was fully subscribed, the moneys were available, and there was actually expended by its officers and agents about four thousand dollars, in the purchase of land, or rights to land, building of houses, payment of railroad fares, grocery bills, and other expenses, incident to the removal of certain individual Mississippi Choctaw Indians, whose rights had been acquired under the contracts hereinbefore referred to. But, that, owing to the advice publicly given of subordinate officers of the Commission to the Five Civilized Tribes, the Mississippi Choctaw Indians repudiated their contracts and the officers of the corporation refused to make further expenditures; a schedule of the expenditures together with copy of the articles of incorporation, are hereunto attached and marked "Exhibit A."

XI. That your petitioner entered into an agreement with George Harmon of Wood, Harmon & Company of New York, N. Y., under which the said Harmon subsequently formed the firm of Harmon & Stringfellow, and said firm expended large sums of money in assisting and attempting to assist in the movement or emigration of Mississippi Choctaws, from Mississippi to the Indian Territory, said accounts are not in possession of your petitioner but will be produced and filed by the parties in possession thereof.

XII. That in accomplishing the purposes herein referred to your petitioner has spent five thousand dollars of his own and several thousand of funds advanced, all of which will be shown by accounts filed; that he has furnished these people legal assistance of the best character in the Indian Territory, in Mississippi and in Washington, that as a result of the labors of your petitioner, there have been identified, removed, enrolled, and allotted something over sixteen hundred and fifty individuals, all of whom are indebted to your petitioner in a reasonable sum for the labors performed and the funds secured. That special benefits have been secured to such as have been removed by individuals under contract, to which your petitioner was a party, most particularly those covered and included in the list of L. P. Hudson, and the amount expended therein, its purposes and uses to be shown by the testimony in said case.

XIII. That the value of the services rendered by your petitioner and those whom he associated with him, was greatly enhanced by reason of the fact that the Choctaw Nation in the Indian Territory denied the rights of the Mississippi Choctaws to participate in any manner in a division or interest in the lands or moneys belonging to the Choctaw People; and that said Choctaw Nation had able and learned counsel at all times employed, opposing every effort made on behalf of the Mississippi Choctaws.

XIV. That the officials of the Department of the Interior and the executive officers of the United States, did not officially recommend the enactment of such legislation as would secure to the Mississippi Choctaws the rights to which they were entitled under the law, and under the treaties between the Choctaw

Nation and the United States, this being caused by divergent views as to these rights; and, for this reason the Mississippi Choctaws were dependent upon the efforts of their attorneys in the presentation of all questions involving their estates in the Indian Territory, either before Congress, the courts or the Departments.

XV. That there was no public money available for the purpose of removing the Mississippi Choctaws to the Indian Territory, with the exception of twenty thousand dollars appropriated by the Indian Appropriation Act of 1902, which appropriation followed the Act of July 1, 1902; and with this appropriation two hundred and eighty-six persons were moved and subsequently a few additional persons, making a little over three hundred persons, and in said removal a deficit of about six thousand dollars was created, which was subsequently appropriated by Congress; that the persons so removed were all or nearly all Indians whose expenses had been paid by your petitioner or his associates at the time of their identification, and with whom your petitioner or his associates had existing contracts.

XVI. That your petitioner is informed that there are at the date of filing this petition about three hundred indigent Mississippi Choctaws, who have been unable to remove to the Indian Territory, and who have thereby lost estates of great value to themselves and their children, but that owing to the fact that the Mississippi Choctaws who had heretofore removed repudiated their contracts, after receiving the benefits, or where they did not repudiate the same, the executive officers refused to recognize said contracts in any manner, your petitioner was unable to secure the necessary funds within the six

months limit, fixed by the law for removal, and the Indians have suffered the loss of estates of an average value of from five to eight thousand dollars each.

XVII. That in securing the funds necessary to move the large number of Mississippi Choctaws, within the time limit of six months, granted by Congress, and thus render effective the identification and enrollment of said people, your petitioner requested his associates to secure removals wherever possible, and a number of persons did so move Mississippi Choctaws, and the moneys so expended by such persons are not included in this petition.

XVIII. That your petitioner is entitled to judgment in a reasonable sum for the services rendered by himself and his associates.

XIX. That your petitioner is entitled to judgment for money expended and to interest thereon; and that his associates are entitled to similar judgments.

Wherefore your petitioner prays:

I. That this petition may be filed and docketed as an intervening petition in case No. 29821 as referred to herein.

II. That he may have judgment against the enrolled Mississippi Choctaws for such sum or sums as may be deemed just and proper under the proof in this case, under the Act of Congress, and under his contracts and those of his associates, for services rendered.

III. That he may have judgment to be pro rated between the enrolled Mississippi Choctaws, for expenses incurred in the protection of the rights of all of said people, and that such expenses may be so pro rated and judgment rendered, together with interest, upon the amount so expended.

IV. That judgment may be rendered in the name of the parties whom the proof shows entitled thereto, for moneys expended in moving individual Mississippi Choctaws, that said judgments run against the individuals, receiving the benefits, and that the same be additional to the general judgment under this petition, together with interest on the amounts so expended.

V. That such individual judgments be rendered for services as may be deemed necessary and proper to make effective the jurisdictional act, and do justice and equity between all parties.

VI. That all judgments rendered be declared liens upon the lands of the defendants as provided in said Act, and for such other and further relief as to the court may seem just and proper.

(Signed)

CHESTER HOWE,

Petitioner.

HOWE & WRIGHT,

Attorneys for Petitioner.

STATE OF OKLAHOMA,

County of Pittsburg, ss.

Chester Howe, being duly sworn on oath states that he has read the foregoing petition, by him subscribed, that he is the petitioner named therein, that the facts stated in said petition as being of his knowledge are true, and as to the facts stated on information he verily believes the same to be true.

[SEAL.]

(Signed)

CHESTER HOWE.

Subscribed and sworn to this the 17th day of August, A. D. 1908.

MRS. B. H. TARTER,

Notary Public.

My commission expires June 24th, 1912.

CITY OF WASHINGTON,
District of Columbia, ss.

I, William W. Wright, being first duly sworn, upon oath depose and say:

I am a member of the firm of Howe & Wright, the attorneys named in the foregoing and annexed petition. On the 22nd day of August, 1908, I served notice upon the Governor of the Choctaw Nation of the foregoing suit by mailing a true copy of said petition, by registered mail, addressed to Green McCurtain, present Governor of the Choctaw Nation, addressed to him at McCurtain, Oklahoma.

WILLIAM W. WRIGHT.

Subscribed and sworn to this the 17th day of August, A. D. August, 1908.

S. A. TERRY,
Notary Public.

[SEAL.]

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Nos. 124, 125, 126, 127, 128, 129.

In the Supreme Court of the United States.

OCTOBER TERM, 1918.

J. S. BOUNDS, ATTORNEY IN FACT FOR T. A. BOUNDS,
JOHN LONDON, WALTER S. FIELD, MADISON M.
LINDLY, J. J. BECKHAM, WILLIAM N. VERNON, AND
KATIE A. HOWE, EXECUTRIX OF THE ESTATE OF
CHESTER HOWE, DECEASED, INTERVENORS, AP-
PELLANTS,

v.

JACK AMOS AND OTHERS, KNOWN AS THE
MISSISSIPPI CHOCTAWS.

**MOTION TO DISMISS APPEAL OR AFFIRM JUDGMENT
OF THE COURT OF CLAIMS.**

Now come appellees, by the Attorney General of
the United States, and move the court to dismiss
the appeals herein, or to affirm the findings and
judgment of the Court of Claims upon the following
grounds, to wit:

1. That the Court of Claims has no jurisdiction
of the parties or the subject matter of the suit.
2. That there is no liability on the Mississippi
Choctaws as a class to pay the claims of the said
appellants.

ALEX. C. KING,
Solicitor General.

HUSTON THOMPSON,
Assistant Attorney General.

(1)

;

In the Supreme Court of the United States.

J. S. BOUNDS, ATTORNEY-IN-FACT FOR T. A. Bounds, Appellant, v. JACK AMOS AND OTHERS, KNOWN AS THE Mississippi Choctaws.	}	No. 124.
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APPEALED FROM THE COURT OF CLAIMS.

BRIEF IN SUPPORT OF THE MOTION OF DEFENDANTS TO DISMISS OR AFFIRM.

STATEMENT.

' This intervening suit was brought by J. S. Bounds, attorney-in-fact for T. A. Bounds, under the act of May 29, 1908 (35 Stat. 457), for \$26,000, the alleged expenses of the removal, subsistence and identification of, and purchase of improvements, for 78 Mississippi Choctaws. This amount includes the value of personal services and expenses of the said T. A. Bounds. Judgment is asked against the individual Indians named in the schedule attached to the petition (Rec. 51-61).

T. A. Bounds was a farmer and cattleman, residing at Wortham, Tex., and about April 1, 1901, he went

(2)

to Mississippi to engage in the business of securing the identification of Mississippi Choctaws. Shortly after his arrival in Mississippi, he employed the firm of Hudson & Arnold to obtain contracts for him with individual Mississippi Choctaw claimants, under article 14 of the treaty of September 27, 1830, and he agreed to pay them \$50 for each contract secured. They secured 70 such contracts for which the said Bounds paid them, prior to August 1, 1901, the sum of \$3,500 (Rec. 121, 122).

The said Hudson and Arnold were engaged, among other things, in securing and selling contracts with individual Mississippi Choctaws claiming under Article 14 of the treaty of September 27, 1830. They dissolved partnership on August 19, 1901 (Rec. 118-121).

The said Bounds in his contracts with individual Indians agreed to secure legislation through which they could obtain their rights, and further agreed to secure their identification, removal, enrollment, and allotment as citizens of the Choctaw Nation, in consideration of a sum equal to one-half of all the lands, timber, and moneys received by said Indians, one-fourth to become due one year and three months after the date of patent or deed, one-fourth in three years and three months from said date, and the remaining one-half in five years and three months from said date. The Indians also agreed upon allotment to lease their lands to the said Bounds for a period of five years from the date of allotment,

the rents, revenues, issues, and profits to be applied to the payment of the consideration named in the contract, the Indians having the option, at any time before final payment of said consideration, of conveying to said Bounds one-half of all the lands so allotted to them (Rec. 140-142).

After securing the contracts, the said Bounds went to the Indian Territory and acquired possessory rights there through the purchase of improvements upon certain lands to enable said Indians to obtain prior allotments thereon. Between November, 1901, and July, 1903, the said Bounds removed a number of Mississippi Choctaws from Mississippi to the Indian Territory, where they were subsequently enrolled upon the final approved roll of the Choctaw Nation, and received valuable allotments of Choctaw-Chickasaw lands. The expenses of removal, including the cost of subsistence, clothing, and other incidental expenses en route, and food, shelter, and other necessary supplies after their arrival, were furnished to said Indians by the said Bounds. All of the Indians so removed repudiated their contracts with said Bounds, and a majority of them accepted allotments on lands other than those previously selected by him (Rec. 122).

ARGUMENT.

The Court of Claims, for the reasons stated in appellee's brief in case of Winton and others, No. 123, has no jurisdiction of suits against individual Mississippi Choctaws growing out of their personal

contracts with the said T. A. Bounds, and if the court had such jurisdiction there is no liability on the part of the Mississippi Choctaws as a class to pay the expenses of removal of a limited number of the class, ranging from a small sum up to a considerable amount of money.

In the Supreme Court of the United States.

OCTOBER TERM, 1918.

JOHN LONDON

v.

JACK AMOS AND OTHERS, KNOWN AS MIS-
SISSIPPI CHOCTAWS.

} No. 125.

WALTER S. FIELD AND MADISON M.
Lindly

v.

JACK AMOS AND OTHERS, KNOWN AS MIS-
SISSIPPI CHOCTAWS.

} No. 126.

APPEAL FROM THE COURT OF CLAIMS.

**BRIEF OF DEFENDANTS IN SUPPORT OF THE MOTION
TO DISMISS OR AFFIRM.**

STATEMENT.

In the year 1896 and prior thereto, appellants Madison M. Lindly, Walter S. Field, and John London, were attorneys at law, residing at South McAlester, Indian Territory, Oklahoma City, Oklahoma Territory, and Alma, Arkansas, respectively (Rec. 128). The intervening suits of the said appellants were brought in the Court of Claims under the act

of May 29, 1908 (35 Stat. 457), as associates of Chester Howe. Their claim of employment was through an alleged band contract claimed to have been taken by said London and one James E. Arnold with three bands of Mississippi Choctaws residing in Mississippi, and through certain contracts taken with individual Mississippi Choctaws in Mississippi by Louis P. Hudson and James E. Arnold, doing business as Hudson & Arnold. On May 7, 1909, Lindly filed an intervening petition claiming employment by Chester Howe as an associate in the prosecution of claims of Mississippi Choctaws for citizenship in the Choctaw Nation; that he had rendered certain legal services and expended \$200. On May 17, 1906, the said Lindly filed another intervening petition claiming that he had employed Louis P. Hudson, James E. Arnold, and Woodson Arnold to secure contracts for him with individual Mississippi Choctaws and that he was associated in the business of prosecuting the claims of the Mississippi Choctaws with Chester Howe; that he had secured legislation beneficial to their rights, caused the removal of large numbers of said Indians to the Indian Territory, where they were enrolled and received allotment of Choctaw-Chickasaw lands, and in the performance of such services had had expended large sums of money (Rec. 67, 68).

Walter S. Field, after having acted as attorney for M. M. Lindly, William N. Vernon, and T. A. Bounds, intervenors in the Winton case, filed on June 9, 1910, an intervening petition in his own behalf, nearly four

years after the beginning of the suit. The said London did not file his intervening petition until February 19, 1912. A short time thereafter he gave his deposition in support of his allegations (Rec. 128).

In the fall of the year 1896 Lindly or Field drafted a band contract in duplicate in favor of M. M. Lindly, the spaces for the signatures thereto being left blank; accompanying this contract were three authorizations to certain bands or head men to represent the Mississippi Choctaws in executing said contract. In June, 1897, the contract and authorizations were delivered to John London by the said Lindly at his office at South McAlester and at the same time he advanced said London \$42 expense money. London was to go to Meridian, Mississippi, to meet James E. Arnold and procure the execution of the contract. He went to Meridian but never met James E. Arnold. A few days later in company with a sewing machine agent, a furniture peddler, and a negro interpreter, London visited various localities in Mississippi where Mississippi Choctaws lived. He found no organized tribes or bands of Mississippi Choctaws, but secured the individual signatures of one, W. E. Riley, a relative of his (London's) wife, and an Indian preacher named Ben Hotubbee. London returned to his home at Alma, Arkansas, and some time afterwards received the said contract by mail with the purported signature of either seven or nine individual Mississippi Choctaws. He subsequently delivered the contract to Lindly who gave it to W. S. Field some time in 1898, who in turn delivered it to Chester Howe in

Washington. The contents of the contract, the identity of the Indians signing it, its proper acknowledgment and execution, and what finally became of it, have not been satisfactorily shown by the evidence. There were, however, no tribes, bands, or head men among the Choctaw Indians of Mississippi, and the contract, as signed, was not a band or tribal contract (Rec. 129).

Late in the year 1898, a paper purporting to be a contract with the Mississippi Choctaws was informally left with the Commissioner of Indian Affairs in his office at Washington, but was never filed, and more that a year later was refused approval by the Commissioner because he was of the opinion that he had no authority to do so. Whether the paper was the so-called band contract delivered by Lindly to Howe does not appear, nor was its authenticity satisfactorily established (Rec. 129).

What contractual relationship existed between Lindly, Field, London, James E. Arnold, and Louis P. Hudson has not been shown by the evidence. Lindly and Field had some business connection with Chester Howe, either as attorney and client, or employees of Howe, to which the Mississippi Choctaws were not parties. The record shows that Walter S. Field had no contract, either band or individual, with any Mississippi Choctaws. His name does not appear on any brief filed before any committee of Congress, the Dawes Commission, the Indian Office, or before any court considering the claim of the Mississippi Choctaws to citizenship in the Choctaw Nation, and no

authority from the Mississippi Choctaws to Field to act in their behalf has been shown, and whatever services he may have performed in their behalf were without their knowledge or acquiescence (Rec. 129, 130). The relationship of London to Lindly was that of an employee engaged to perform specified services, and London was in no way connected with the claim of Chester Howe or Walter S. Field (Rec. 130). The identity of individual claimants living in Mississippi, or elsewhere, if any, who employed said Lindly prior to May 31, 1900, or thereafter, to represent them in their claims to citizenship, and who were subsequently enrolled in the Choctaw Nation, has not been established by the evidence. Nor is the fact that said Lindly employed the intervenors James E. Arnold or Louis P. Hudson to secure contracts for him with individual Mississippi Choctaws, or that such contracts were ever taken by said Arnold or Hudson as agents for said Lindly, Field, or Howe, established by the evidence (Rec. 130).

Walter S. Field was active in interviewing and otherwise impressing upon some individual Congressmen and United States Senators his views as to the necessary and proper legislation for the procurement of the rights of Mississippi Choctaws to citizenship in the Choctaw Nation. The extent and effect, however, of such services do not appear, nor does it appear that the legislation finally enacted was the result of such interviews or services (Rec. 130).

No express copartnership between Field, Lindly, and Howe in which London, James E. Arnold, and Louis P. Hudson were silent partners by oral agree-

ment has been satisfactorily shown by the evidence (Rec. 130):

ARGUMENT.

The Court of Claims has no jurisdiction of these cases, nor is there any liability thereon, for the reasons submitted in our argument of the Winton case, No. 123.

No employment, however, of the appellants, Lindly, Field, and London by the Mississippi Choctaws, either as a class, or as individuals, to act in their behalf has been shown by the evidence, and if they had rendered any service it was merely as volunteers.

No association between the said appellants and Chester Howe in relation to the claim of the said Indians to citizenship in the Choctaw Nation that would authorize their becoming parties to this suit under the act of May 29, 1908, has been established by the record.

If an association between appellants and Howe had been established, it is doubtful whether they were authorized by the jurisdictional act to intervene as parties to the Winton suit. The act appears to have limited such intervention to Vernon, Bounds, and Howe (*Robertson v. Gordon*, 226 U. S. 311, 317).

The means by which appellants attempted to establish their employment by the Mississippi Choctaws and their association with Chester Howe have been severely criticized by the Court of Claims (Rec. 179-182).

If appellants are entitled to intervene, they have totally failed to show any services rendered by them to the Mississippi Choctaws, either as a class or individuals.

In the Supreme Court of the United States.

OCTOBER TERM, 1918.

J. J. BECKHAM, APPELLANT,	} No. 127
v.	
JACK AMOS AND OTHERS, KNOWN AS the Mississippi Choctaws.	

APPEAL FROM THE COURT OF CLAIMS.

**BRIEF OF DEFENDANTS IN SUPPORT OF THE MOTION
TO DISMISS OR AFFIRM.**

STATEMENT.

Appellant filed his intervening petition under the act of May 29, 1908 (35 Stat. 457), as an associate of J. S. and T. A. Bounds and William N. Vernon, claiming \$6,000 as the expenses of identification and removal of 16 Mississippi Choctaws, with whom he had contracts, from Mississippi to the Indian Territory and taking care of said Indians after their removal (Rec. 62-65).

In the summer of 1901 J. J. Beckham and R. J. Ellington, residing at Mexia, Texas, entered into a partnership agreement to engage in the business of

securing identification of, and allotment of lands to, Mississippi Choctaws in the Indian Territory. Under the terms of the agreement appellant agreed to furnish the money and Ellington the labor, the proceeds to be equally divided between them (Rec. 126).

After the passage of the act of July 1, 1902, appellant furnished money which was used to assist about 15 Mississippi Choctaws in the State of Mississippi to appear before the Dawes Commission for identification, and in July, 1903, the said Ellington, with funds furnished by appellant, transported to the Choctaw Nation, and subsisted en route, nine Mississippi Choctaws from whom Ellington had previously secured separate contracts. Shortly thereafter Ellington, becoming dissatisfied with the enterprise, conveyed by assignment in writing his entire interest for a nominal consideration to appellant, who, after the arrival of said Indians in the Choctaw Nation furnished them with supplies for a period of about six months. After this the said Indians voluntarily left the care and protection of said appellant and repudiated their contracts with him (Rec. 126, 127).

The Indians were located on segregated lands, not subject to allotment, by Ellington and appellant, who expected to reimburse themselves for the expenses of removal by leasing their allotments. After the assignment by Ellington of his interest to appellant, the improvements were leased by Beckham to third parties for one year, for which he received \$600. The improvements were then turned over to

one Sam Downing, who was to get what he could for them for the benefit of the Indians. Appellant took Downing's note for the consideration, after which he quit the business entirely and did not know whether Downing was ever paid for the improvements. Most of these Indians were afterwards enrolled and allotted by the Dawes Commission (Rec. 127).

ARGUMENT.

This is in effect a suit against nine individual Mississippi Choctaws, with whom appellant had contracts, and whom he caused to be removed at his expense from Mississippi to the Indian Territory.

No association with anyone entitled to sue under the act of May 29, 1908, has been established by the evidence. The claim is also subject to the objections as to jurisdiction and liability discussed in the Winton case, No. 123.

Upon the question of merits there is no evidence that all of the Mississippi Choctaws removed were ever enrolled or received allotments, and there is no evidence as to the identity of those who did receive allotments.

Appellant did them a positive injury by placing them upon segregated lands which were not subject to allotment. They afterwards repudiated their contracts and severed their connections with him. Most of them were afterwards enrolled and allotted by the Dawes Commission. Appellant finally sold out his interest in the enterprise, and has no claim against the Mississippi Choctaws, either as a class or as individuals.

In the Supreme Court of the United States.

OCTOBER TERM, 1918.

WILLIAM N. VERNON,

v.

JACK AMOS AND OTHERS, KNOWN AS MIS-
sissippi Choctaws.

} No. 128.

APPEAL FROM THE COURT OF CLAIMS.

**BRIEF OF DEFENDANTS IN SUPPORT OF THE MOTION
TO DISMISS OR AFFIRM.**

STATEMENT.

Appellant filed this intervening suit under the act of May 29, 1908 (35 Stat. 457) against 64 individual Mississippi Choctaws named in the schedule attached to his petition, and claimed the sum of \$15,053.17 as the expenses incurred in removing said Indians from Mississippi to the Indian Territory and subsisting them after removal. The charges against such Indians range from \$10 to \$2,597.65 per capita. The personal expenses of the appellant were \$1,477.47, and were to be prorated among said individual Indians (Rec. 31-41).

William N. Vernon was an attorney at law residing at Rockwall, Texas, when he went to the State of

Mississippi about September 1, 1902, for the purpose of engaging in the business of removing Mississippi Choctaws to the Indian Territory. He secured 60 separate contracts with individual Indians in which they agreed in consideration of services rendered, and to be rendered, by the appellant in establishing their rights as members of the Choctaw Nation, and providing for their removal to the Indian Territory, to pay to him a sum equal to one-half of all the Choctaw property that they might receive as members of that tribe. The said Indians also agreed to lease their allotments to the appellant for a period not to exceed five years, the proceeds to be applied to the payment of the amounts due the appellant under the terms of the contracts (Rec. 122, 123). Prior to September 1, 1902, appellant spent considerable time and some money in ascertaining what lands could be obtained in the Choctaw Nation for the use of the Mississippi Choctaws and purchased improvements on such lands in order that the possessory rights might enable said Indians to obtain allotments on such lands (Rec. 123).

Between September, 1902, and March, 1903, appellant removed 60 Mississippi Choctaws from Mississippi to the Indian Territory, who were finally enrolled as citizens of the Choctaw Nation, paid all of the expenses incident to their removal, and upon their arrival placed them upon the lands to which he had previously secured possessory rights, furnished them with shelter and other necessities, and assisted each of said Indians until their allotments

were obtained. He ceased to remove Indians after the passage of the act of March 3, 1903, owing to a provision therein for the removal of such Indians by the Government. After the lands were allotted, appellant took individual leases from said Indians for terms ranging from two to five years to reimburse himself for expenses incurred in their behalf, and held the same until he was subsequently dispossessed. The amount expended by Vernon in the removal and settlement of such Indians, and the sums received by him as the proceeds of the leases have not been satisfactorily established by the evidence (Rec. 123).

ARGUMENT.

This suit was brought against 64 individual Mississippi Choctaws for sums ranging from \$10 to over \$2,500 per capita. The record shows that he had 60 separate contracts with individual Indians whom he removed to the Indian Territory. The claim is subject to the same objections against jurisdiction and liability raised in the Winton case, No. 123.

Upon the question of merits the record shows that appellant took leases for terms ranging from two to five years to reimburse himself for expenses incurred, and held such leases until he was dispossessed by the Government. Neither the amounts expended in removal and settlement of the Indians nor the proceeds from the leases have been satisfactorily established by the record in the court below. He has, therefore, failed to prove his claim.

In the Supreme Court of the United States.

OCTOBER TERM, 1918.

KATIE A. HOWE, EXECUTRIX OF THE ES-
tate of Chester Howe, deceased, appel-
lant,

v.

JACK AMOS AND OTHERS, KNOWN AS THE
Mississippi Choctaws.

No. 129.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF OF DEFENDANTS IN SUPPORT OF THE MOTION
TO DISMISS OR AFFIRM.

STATEMENT.

Appellant filed her intervening suit under the act of May 29, 1908 (35 Stat. 457), claiming employment of Chester Howe by the Mississippi Choctaws through an interest in certain contracts taken by the firm of Hudson and Arnold with individual Mississippi Choctaws in Mississippi (Rec. 42-45), and a certain band contract referred to in the testimony of Walter S. Field, one of the intervenors (Rec. 51). The services for which compensation is claimed were rendered in the alleged identification of certain individual Mississippi Choctaws, and in the enactment by Congress of the act of July 1, 1902, and the removal of certain individual Mississippi Choctaws to the Indian Territory (Rec. 42-45).

Chester Howe lived and practiced law for many years in the Territory of Oklahoma. In 1896 he removed his law office and business to Washington, D. C., where he continued to live until his death on October 1, 1908, while on a visit to Oklahoma.

In the early part of 1899 said Howe, by an oral agreement with Louis P. Hudson, acquired an undivided one-third interest in approximately 465 contracts with individual Mississippi Choctaws taken by the firm of Hudson and Arnold prior to the dissolution of said firm in August, 1901. The purpose of these contracts was to secure the rights of said Mississippi Choctaws to allotments of Choctaw-Chickasaw tribal lands, and to remove said Indians to the Indian Territory (Rec. 116). Less than forty of the total number of persons purporting to have signed said contracts were finally enrolled (Rec. 119).

The services to be rendered by said Howe were legal services before Congress and the Interior Department in representing and protecting the interests of said Indians and establishing their rights in and to lands in the Choctaw Nation (Rec. 116).

Large sums of money were borrowed by said Arnold and Hudson from various persons on account of said contracts with individual Mississippi Choctaws, the amount of which is not disclosed, and for which the said Hudson and Arnold failed to account to said Howe (Rec. 116, 117). Fees in excess of \$30,000 were also collected by said Hudson and Arnold under said contracts from individual claimants (Rec. 119). Because of his failure to receive his share of said moneys, Howe became greatly dissatisfied with the

Mississippi Choctaw business, and in the spring of 1902 decided to withdraw and so notified his correspondents. Thereupon said Arnold went to Washington and on May 12, 1902, procured the further assistance of said Howe by the acknowledgment in writing of the agreement previously made by Hudson with said Howe by which the latter was to receive one-third of the fees in the Hudson and Arnold contracts, and by signing an agreement authorizing the employment of J. H. Ralston, of the firm of Ralston & Siddons, to assist said Howe. In May, 1902, Howe employed the firm of Ralston & Siddons to assist him in securing the rights of said Mississippi Choctaws upon a contingent fee of \$5,000, to be paid in sums of \$250 or more by said Howe, out of his own fees, as fast as the same could be collected, the amounts thus collected to be evenly divided between said firm of Ralston & Siddons and said Howe until the fee should be paid (Rec. 117).

There were no tribes, bands, or headmen among the Choctaw Indians of Mississippi and the contract claimed to have been made between M. M. Lindly and certain bands of Mississippi Choctaws and delivered by said Lindly to Walter S. Field was not a band or tribal contract (Rec. 129).

Between December, 1900, and July 1, 1902, said Howe was actively engaged in pressing the claims of Mississippi Choctaws, with whom James E. Arnold and others had individual contracts, upon individual Congressmen and Senators, the subcommittee on Indian Affairs of the House of Representatives, the officials of the Indian Office, and the Secretary of the

Interior. It is not established by the evidence, however, that the legal services rendered by Howe were effective in establishing the claim of said Mississippi Choctaws to citizenship in the Choctaw Nation, nor was the enactment of the legislation under which the Mississippi Choctaws received allotments of Choctaw-Chickasaw tribal lands the result of his professional services (Rec. 117).

Chester Howe was not instrumental in the removal of a single Mississippi Choctaw from Mississippi to the Indian Territory, as claimed in his petition (Rec. 126).

ARGUMENT.

This suit was brought under the authority of the act of May 29, 1908, by virtue of a one-third interest obtained by Chester Howe in approximately 465 contracts taken by Hudson and Arnold with individual Mississippi Choctaw claimants, of whom less than 40 were enrolled and received allotments. The question of jurisdiction and liability applicable to this case are discussed in our argument of the Winton case, No. 123.

The Court of Claims has found that James E. Arnold failed to establish his claim (Rec. 120, 121). The lower court also held that no contractual relations existed between the Mississippi Choctaws and Chester Howe, but that he was simply an employe of the firm of Hudson and Arnold retained for the performance of legal services at a stipulated compensation, and that the said Chester Howe never before this suit regarded the Mississippi Choctaws as liable for his fees (Rec. 177-178). The lower court also held that the Arnold

claim for removal of individual Indians could not be recognized, and that Arnold had been well paid for his services and was amply able to have paid Howe for any legal services rendered by him (Rec. 179).

The band contract under which appellant also claims never had any existence in fact, and was never mentioned in the original petition prepared by Howe before his death, or in the amended petition prepared by his executrix, and was only set up in the second amended petition of appellant (Rec. 50, 51). Concerning this alleged band contract and the efforts of Lindly, Field, and London to establish an association with Chester Howe, then deceased, the Court of Claims was very severe in its strictures (Rec. 179-182).

If appellant had a right to institute this suit and the Court of Claims had jurisdiction to entertain it, no recovery could be obtained because appellant's decedent, Chester Howe, according to the findings of the lower court, had rendered no services to the Mississippi Choctaws.

CONCLUSION.

For the reasons stated in the foregoing briefs, it is respectfully submitted that the judgment of the Court of Claims dismissing the intervening petitions of the said appellants should be affirmed.

ALEX. C. KING,

Solicitor General.

HUSTON THOMPSON,

Assistant Attorney General.

GEORGE M. ANDERSON,

Attorney.

SUPREME COURT OF THE UNITED STATES.

Nos. 6, 7, 8, 9, 10, 11, 12.—OCTOBER TERM, 1920.

Wirt K. Winton, Administrator of the Estate of Charles F. Winton, deceased, et al.,
Appellants,

6 *vs.*

Jack Amos and others, known as The
Mississippi Choctaws.

J. S. Bounds, Attorney-in-fact for T. A.
Bounds, Appellant,

7 *vs.*
Same.

John London, Appellant,

8 *vs.*
Same.

Walter S. Field and Madison M. Lindly,
Appellants,

9 *vs.*
Same.

J. J. Beckham, Appellant,

10 *vs.*
Same.

William N. Vernon, Appellant,

11 *vs.*
Same.

Katie A. Howe, Executrix of the Estate of
Chester Howe, deceased, Appellant,

12 *vs.*
Same.

Appeals from the
Court of Claims.

[March 7, 1921.]

Mr. Justice PITNEY delivered the opinion of the Court.

These are appeals from a judgment of the Court of Claims rejecting claims for alleged services rendered and expenses incurred

in the matter of the claims of the Mississippi Choctaws to citizenship in the Choctaw Nation. The decision of the Court of Claims is reported in 51 Ct. Cls. 284. In the *Winton* case (No. 6), a request for additional findings, equivalent to an application for rehearing, was denied, 52 Ct. Cls. 90. The appeals were taken under sec. 182 Jud. Code.

The jurisdiction of the court below arose under an Act of April 26, 1906 (Ch. 1876, sec. 9, 34 Stat. 137, 140), and an amendatory provision in the Act of May 29, 1908 (Ch. 216, sec. 27, 35 Stat. 444, 457). The former provided: "That the Court of Claims is hereby authorized and directed to hear, consider, and adjudicate the claims against the Mississippi Choctaws of the estate of Charles F. Winton, deceased, his associates and assigns, for services rendered and expenses incurred in the matter of the claims of the Mississippi Choctaws to citizenship in the Choctaw Nation, and to render judgment thereon on the principle of quantum meruit, in such amount or amounts as may appear equitable or justly due therefor, which judgment, if any, shall be paid from any funds now or hereafter due such Choctaws by the United States. Notice of such suit shall be served on the governor of the Choctaw Nation, and the Attorney-General shall appear and defend the said suit on behalf of said Choctaws."

The original petition was filed October 11, 1906, by Wirt K. Winton, one of the heirs-at-law of Charles F. Winton, in behalf of himself and the other heirs and also in behalf of the associates and assigns of Charles F. Winton. Thereafter it was provided by the amendatory Act that the court be authorized and directed to hear, consider, and adjudicate claims of like character on the part of William N. Vernon, J. S. Bounds, and Chester Howe, their associates or assigns, and render judgment on the same principle of *quantum meruit*; the judgment, if any, to be paid from "any funds now or hereafter due such Choctaws as individuals by the United States"; Vernon, Bounds, and Howe were authorized to intervene in the pending suit of the estate of Winton, and it was "provided further, That the lands allotted to the Mississippi Choctaws are hereby declared subject to a lien to the extent of the claims of the said Winton and of the other plaintiffs authorized by Congress to sue the said defendants, subject to the final judgment of the Court of Claims in the said case. Notice of

such suit or intervention shall be served on the governor of the Choctaw Nation, and the Attorney-General shall appear and defend the said suit on behalf of the said Choctaws."

Thereafter a second amended petition was filed by Wirt K. Winton, as administrator of the estate of Charles F. Winton, deceased, in behalf of the estate of Winton and also of Winton's associates and assigns. In this petition James K. Jones, administrator of James K. Jones, deceased, and Robert L. Owen in his own behalf, joined. Intervening petitions were filed by William N. Vernon; Chester Howe, who died pending suit and in whose place his administratrix, Katie A. Howe was substituted; and several others.

As shown by the findings the claim of Winton and associates arose as follows: By Article 3 of the Treaty of September 27, 1830 (7 Stat. 333), known as the Treaty of Dancing Rabbit Creek, the Choctaw Nation of Indians ceded to the United States the entire country possessed by them east of the Mississippi River, and agreed to remove beyond the Mississippi during the three years next succeeding. But, in view of the fact that some of the Choctaws preferred not to move, it was provided in Article 14 that each head of a family who desired to remain and become a citizen of the States should be permitted to do so, and should thereupon be entitled to a reservation of one section of land, with an additional half section for each unmarried child living with him over ten years of age, and a quarter section for each child under ten. If they resided upon said lands intending to become citizens of the States for five years after the ratification of the Treaty, a grant in fee simple should issue; and it was further provided: "Persons who claim under this article shall not lose the privilege of a Choctaw citizen, but if they ever remove are not to be entitled to any portion of the Choctaw annuity." By another article (19) reservations were provided for certain prominent Choctaws by name, and for limited numbers of heads of families and captains.

The mixed-blood Choctaws who elected to remain in Mississippi were provided for under Article 19, while the full bloods who remained and elected to become citizens of the State were provided for under Article 14; hence full-blood Mississippi Choctaws have always been called "Fourteenth Article Claimants." Choctaws who remained in Mississippi under that Article adopted the dress,

habits, customs, and manner of living of the white citizens of the State. They had no tribal or band organization or laws of their own, but were subject to the laws of the State. They did not live upon any reservation, nor did the Government exercise supervision or control over them. No funds were appropriated for their support, though much land was given to them. Neither the Indian Office nor the Department of the Interior assumed or exercised jurisdiction over them, and they never recognized them either individually or as bands, but regarded them as citizens of the State of Mississippi, and the Department held it had no authority to approve contracts made with them.

Pending the negotiation of the Treaty, the Legislature of the State of Mississippi passed an Act, January 19, 1830, abolishing the tribal customs of Indians not recognized by the common law or the law of the State, making them citizens of the State, with the same rights, immunities, and privileges as free white persons, extending over them the laws of the State, validating tribal marriages, and abolishing the tribal offices and posts of power. Recognition of their citizenship was afterwards embodied in the state constitution.

The right of the Fourteenth Article Mississippi Choctaws to citizenship in the parent tribe appears to have been recognized at one time by the Choctaw Nation west, which had removed to Indian Territory pursuant to the Treaty. On December 24, 1889, the Nation, through its legislature, memorialized Congress, reciting that there were "large numbers of Choctaws yet in the States of Mississippi and Louisiana who are entitled to all the rights and privileges of citizenship in the Choctaw Nation", and requesting the United States Government to make provision for the emigration of these Choctaws from said States to the Choctaw Nation. In 1891 a commission was provided for and funds appropriated by the Choctaw Council for the removal and subsistence of Mississippi Choctaws to the Nation, and during that year 181 were removed and admitted to citizenship.

By Act of March 3, 1893 (Ch. 209, sec. 16, 27 Stat. 612, 645), Congress created the Commission to the Five Civilized Tribes, familiarly known as the Dawes Commission, with the object of procuring through negotiation the extinguishment of the national or tribal title to the lands of those tribes in the Indian Territory,

either by their cession to the United States or allotment in severalty among the Indians, with a view to the ultimate creation of a State. By Act of June 10, 1896 (Ch. 398, 29 Stat. 321, 339-340), the Commission was directed to make a complete roll of citizenship of each of the Five Civilized Tribes, and applicants for enrollment were to make application to the Commission within three months from the passage of the Act and have the right of appeal from its decision to the "United States District Court" (construed by this court, in *Stephens v. Cherokee Nation*, 174 U. S. 445, 476-477, to mean the United States Court in the Indian Territory).

At this time the full-blood Mississippi Choctaws were extremely poor, living in insanitary conditions and working at manual labor for daily wages. Their children were not permitted to attend schools provided for the whites, and they were denied all social and political privileges. As already appears, they were receiving neither care nor attention from the Indian Office or the Department of the Interior; and they were so far overlooked by the Dawes Commission that the time limited by the Act just mentioned expired without their being included in the enrollment.

The activities of Winton and associates for which recovery is asked date from this point. Soon after the passage of the Act of June 10, 1896, Messrs. Owen and Winton entered into an agreement under which the latter was to proceed to Mississippi and procure contracts with such Indians as might be entitled to participate in any distribution of lands or moneys of the Choctaw and Chickasaw Nations, arranging to secure evidence, powers of attorney, and contracts, as prescribed by Mr. Owen; Owen was to prepare the necessary forms and represent the claims of the Indians before the proper officers of the United States or Indian Governments, with the assistance and coöperation of Winton; Winton to receive one-half of the net proceeds of the contracts. A supplementary agreement between the same parties provided in terms that Owen should have a half interest in the contracts, and in the event of accident to Winton should take them up as attorney in Winton's place. Immediately thereafter Winton proceeded to Mississippi, and during the year 1896 and the years following procured approximately 1,000 contracts with full-blood Mississippi Choctaws, some in the name of Winton, some in the name of Owen, by

the terms of which Winton and Owen agreed to use their best efforts to secure the rights of citizenship for said Mississippi Choctaws, as members of the Choctaw Nation, in the lands and funds of said tribe, for a fee of one-half the net interest of each allottee in any allotment thereafter secured. These contracts were subsequently abandoned by Owen and Winton because void and unenforceable under the Acts of June 28, 1898, and May 31, 1900, referred to below, and new contracts were thereafter taken, principally in the name of Charles S. Daley, but in behalf of Owen and Winton, with whom Daley was associated. These contracts recognized the previous services of Winton and associates as beneficial to the Indians, employed Daley and associates, including Winton and associates, as attorneys to look out for, protect, defend, and secure the interest of the Indians in the lands in Indian Territory to which they might be entitled as Mississippi Choctaws or as members of the Choctaw Nation, and to procure the recognition of their rights in said lands and in and to any funds arising from the Choctaw-Chickasaw lands, and provided that as compensation for all services rendered and to be rendered the attorneys should receive a sum of money equal to one-half of the value of the net recovery, based upon the actual value of the lands recovered. They seem to have contained other provisions looking to the sale or encumbrance, in part at least, of the lands secured for the Indians. The validity of these contracts has not been discussed.

Early in 1897 Mr. Owen spoke to Hon. John Sharp Williams, then Representative in Congress from the Fifth Congressional District of Mississippi, wherein practically all full-blood Mississippi Choctaws resided, calling his attention to the possible rights of such Choctaws to participate in the partition of the lands of the Choctaw Nation, at the same time submitting to him a copy of the Dancing Rabbit Creek Treaty, and calling his attention to Article 14. This was the first time the matter had been called to the attention of Mr. Williams. Thereafter, and until March 4, 1903, when he ceased to represent that District, he was active in all matters of legislation concerning the Mississippi Choctaws.

In December, 1896, Winton presented to Congress a memorial in behalf of Jack Amos and other full-blood Mississippi Choctaws asking that their rights under Article 14 of the Treaty of 1830 be accorded to them, and that they be provided for by enrollment

either by the Dawes Commission or by a special agent under the direction of the Commissioner of Indian Affairs. In January, 1897, a second memorial in behalf of Jack Amos and 246 other full-blood Mississippi Choctaws being heads of families was presented to Congress through Winton, asking that they be enrolled so as to participate in the proposed allotment of Choctaw lands in Indian Territory; and setting up that by the true construction of Article 14 of the Treaty of 1830, when viewed in connection with other treaties and laws and the history of the Choctaw tribe, the Mississippi Choctaws were entitled to remain in Mississippi as United States citizens and still retain the rights of a Choctaw citizen, except as to a participation in the annuity.

In September, 1897, Winton presented a third memorial of like purport to the Secretary of the Interior.

Prior to the presentation of the first of these memorials, and in September or October, 1896, Mr. Owen appeared before the Dawes Commission in behalf of Jack Amos and 97 other full-blood Choctaws residing in Mississippi, and attempted to secure their enrollment under the Act of June 10, 1896. The Commission refused, on the ground that they were not resident in the Indian Territory. Owen appealed to the United States Court for the Central District of Indian Territory, where the ruling of the Commission was affirmed. This decision was "indirectly affirmed" by this court on May 15, 1899, in the case of *Stephens v. Cherokee Nation*, 174 U. S. 445, where it was held that the legislation under which the judgment was rendered was constitutional, and that this court was without jurisdiction to review decisions of the courts of Indian Territory in citizenship cases except upon the question of the constitutionality or validity of the legislation.

On February 11, 1897, a resolution drawn up by Mr. Owen was passed by the Senate, directing the Secretary of the Interior to transmit certain historical data and information respecting the rights of the Fourteenth Article claimants. This was referred by the Secretary to the Commissioner of Indian Affairs for reply, and his reply, containing material supporting the claims of the Mississippi Choctaws, was transmitted by the Secretary to the Senate, February 15, 1897 (Senate Doc. 129, 54th Cong., 2d Sess.).

About the same time, Mr. Owen made an argument before the Committee on Indian Affairs of the House in support of House

Bill No. 10,372, intended to permit the Mississippi Choctaws to continue to reside in that State and still claim the rights of Choctaw citizens. A favorable report was made by the Committee, March 3, 1897 (House Report 3,080, 54th Cong., 2d Sess.), but the bill never passed either House.

In the Indian Appropriation Act of June 7, 1897, however, the following provision was contained: "That the commission appointed to negotiate with the Five Civilized Tribes in the Indian Territory shall examine and report to Congress whether the Mississippi Choctaws under their treaties are not entitled to all the rights of Choctaw citizenship except an interest in the Choctaw annuities" (Ch. 3, 30 Stat. 62, 83).

Following the passage of this Act Mr. Owen appeared before the Dawes Commission in the interest of the Mississippi Choctaws with whom he had contracts. On January 28, 1898, the Commission made a report to Congress as required by the Act last mentioned (House Doc. 274, 55th Cong., 2d Sess.), setting forth in brief the history of the Mississippi Choctaws and their then present condition; and submitting an elaborate argument in opposition to the contention that those Choctaws might continue their residence and political status in Mississippi as in the past and still enjoy all the rights of Choctaw citizenship except to share in the Choctaw annuities; declaring that in order to avail himself of the privileges of a Choctaw citizen, any person claiming to be a descendant of those provided for in Article 14 of the Treaty of 1830 "must first show the fact that he is such descendant, and has in good faith joined his brethren in the Territory with the intent to become one of the citizens of the Nation. Having done so, such person has a right to be enrolled as a Choctaw citizen and to claim all the privileges of such a citizen, except to a share in the annuities. And that otherwise he can not claim as a right the 'privilege of a Choctaw citizen.' " The Commission further said that, if they were correct in this, still any person presenting himself claiming the right must be required by some tribunal to prove the fact that he was a descendant of some one of those Indians who originally availed themselves of and conformed to the requirements of the Fourteenth Article of the Treaty of 1830. "The time for making application to this commission to be enrolled as a Choctaw citizen has expired. It would be necessary, therefore, to extend by law the time for per-

some claiming this right to make application and be heard by this commission, or to create a new tribunal for that purpose."

On June 28, 1898, Congress passed an Act, commonly known as the Curtis Act, which contained in sec. 21 provisions for the making of rolls of the Five Civilized Tribes by the Dawes Commission, and among others the following:

"Said commission shall have authority to determine the identity of Choctaw Indians claiming rights in the Choctaw lands under article fourteen of the treaty between the United States and the Choctaw Nation concluded September twenty-seventh, eighteen hundred and thirty, and to that end they may administer oaths, examine witnesses, and perform all other acts necessary thereto, and make report to the Secretary of the Interior.

"No person shall be enrolled who has not heretofore removed to and in good faith settled in the nation in which he claims citizenship: *Provided, however,* that nothing contained in this Act shall be so construed as to militate against any rights or privileges which the Mississippi Choctaws may have under the laws of or the treaties with the United States." (Ch. 517, 30 Stat. 495, 503.)

Public notice having been given in Mississippi as to the times and places at which the Commission would hear applications for identification under the above provision, one of the Commissioners, A. S. McKennon, proceeded to Mississippi in January, 1899, with a force of clerks and stenographers and there identified and made up a schedule of 1923 persons as being Mississippi Choctaws entitled to citizenship in the Choctaw Nation under Article 14 of the Treaty. The principle adopted was that proof of the fact that a claimant was a full-blood Indian whose ancestors were living in Mississippi at the date of the treaty was sufficient evidence to report his name as a Mississippi Choctaw under section 21 of the Curtis Act. This schedule, known as the "McKennon Roll", was subsequently approved by the Commission, who forwarded it with a report dated March 10, 1899, to the Secretary of the Interior. The schedule never was approved by the Secretary, and was attempted to be withdrawn by the Commission December 20, 1900, errors having been discovered in it. It was formally disapproved by the Secretary March 1, 1907. The Court of Claims finds that "the work of Commissioner McKennon, covering a period of about three weeks, in identifying and making up said schedule, was interfered with and retarded by said Charles

F. Winton, who endeavored to prevent the Indians from appearing for identification." No explanation of this appears. At the same time it is found that Mr. Owen (who of course was associated with Winton) furnished to Commissioner McKennon a list of 16,000 Choctaw Indians, which aided McKennon in his official work.

Because of material errors discovered by the Commission in the McKennon roll, another party was organized and sent out by the Commission for the purpose of making a more accurate and complete roll of the Mississippi Choctaws under the Act of 1898, whose hearings were commenced in Mississippi in December, 1900, resumed in April of the following year, and continued until the latter part of August, 1901.

February 7, 1900, Winton and associates presented a memorial to Congress praying that the treaty rights of the Mississippi Choctaws be so construed as to afford them the rights of Choctaw citizens without removal, or that they be permitted to have those rights determined in the courts. Congress took no action upon this.

April 4, 1900, Winton and his associates memorialized Congress requesting the following amendment to the Indian Appropriation Act then pending: "Provided, That any Mississippi Choctaw duly identified and enrolled as such by the United States Commission to the Five Civilized Tribes shall have the right, at any time prior to the approval of the final rolls of the Mississippi Choctaws by the Secretary of the Interior, to make settlement within the Choctaw-Chickasaw country, and on proof of the fact of bona fide settlement they shall be enrolled by the Secretary of the Interior as Choctaws entitled to allotment."

The Act as passed contained the following:

"*Provided*, That any Mississippi Choctaw duly identified as such by the United States Commission to the Five Civilized Tribes shall have the right, at any time prior to the approval of the final rolls of the Choctaws and Chickasaws by the Secretary of the Interior, to make settlement within the Choctaw-Chickasaw country, and on proof of the fact of bona fide settlement may be enrolled by such United States Commission and by the Secretary of the Interior as Choctaws entitled to allotment: *Provided further*, That all contracts or agreements looking to the sale or encumbrance in any way of the lands to be allotted to said Mississippi Choctaws

shall be null and void." (Act of May 31, 1900, Ch. 596, 31 Stat. 221, 236-237.)

The Dawes Commission thereafter required from all applicants for enrollment proof of descent from Choctaw Indians who remained in Mississippi and received patents for lands under the Fourteenth Article of the Treaty of 1830. This constituted a reversal of the principle previously adopted in making the McKennon Roll, to wit, a presumption that the ancestors of full-blood Choctaws residing in Mississippi had fully complied with the requirements of Article 14. It resulted that only six or seven persons claiming as Mississippi Choctaws were enrolled under the Act of May 31, 1900, although from 6,000 to 8,000 applications were filed in 1900 and the early part of 1901.

On April 1, 1901, the second party, already mentioned, sent by the Dawes Commission to Mississippi for the purpose of making a complete and accurate roll of Mississippi Choctaws, resumed hearings at Meridian, Mississippi, and held continuous sessions there and at other places in the State until the latter part of August. The Court of Claims finds that during these hearings and the making of this roll the conduct of Winton and associates increased the work of enrollment and impeded its progress. Being advised by Owen and believing that the McKennon Roll was a finality and constituted a favorable judgment in behalf of the Choctaws whose names appeared therein, Winton and associates advised all Indians who had been previously enrolled not to appear again before the Commission for identification. Nevertheless, as already stated, 6,000 or 8,000 applications for enrollment were made, of which only six or seven were accepted under the stringent rule of proof adopted by the Commission.

June 20, 1901, Winton, under advice of counsel, began taking new contracts with individual Choctaws living in Mississippi, in lieu of the previous contracts already mentioned. The new contracts were 834 in number, and embraced in all about 2,000 persons.

March 21, 1902, while preparation of the identification roll of Mississippi Choctaws was still in progress, an agreement was entered into between the Choctaw and Chickasaw Nations and the Dawes Commission in which, by sections 41, 42, 43 and 44, it was proposed to fix the status of the Mississippi Choctaws. This agreement, after some amendments in Congress, was approved by Act

of July 1, 1902, and ratified by the Choctaws and Chickasaws on September 25, 1902 (Ch. 1362, 32 Stat. 641, 651-652). It was under this agreement, known as the Choctaw-Chickasaw Supplemental Agreement, that practically all Mississippi Choctaws were enrolled and secured their rights to allotments of Choctaw tribal lands. Sec. 41 as signed by the parties did not contain the full-blood rule of evidence—that is, that full-blood Choctaws living in Mississippi should be presumed to be descendants of Choctaws who had complied with the requirements of Article 14 of the Treaty of 1830. It permitted all persons identified by the Commission under the provisions of section 21 of the Act of July 28, 1898, as Mississippi Choctaws entitled to benefits under Article 14 of the Treaty to make *bona fide* settlement within the Choctaw-Chickasaw country at any time within six months after the date of the final ratification of the agreement, and upon proof of such settlement to the Commission within one year after the date of such ratification they were to be enrolled by the Commission as Mississippi Choctaws entitled to allotment; but declared: “The application of no person for identification as a Mississippi Choctaw shall be received by said Commission after the date of the final ratification of this agreement.” While the supplemental agreement as thus proposed was pending in the Senate, Winton and associates presented a memorial to that body in behalf of the full-blood Mississippi Choctaws, reviewing prior legislation and praying that the provisions of the agreement then pending should be amended so that the full-blood rule of evidence should be established and the Mississippi Choctaws given time after identification to remove to the Choctaw country and longer time within which to make application. (Senate Doc. 319, 57th Cong., 1st Sess.) The memorial prayed that sections 41, 42, 43, and 44, which, it was alleged, imposed onerous conditions upon Mississippi Choctaws, should be struck out and plain provision made that persons whose names appeared upon the McKennon Roll, and such full-blood Mississippi Choctaws as might be identified by the Commission, and the wives, children, and grandchildren of all such, should alone constitute the “Mississippi Choctaws” entitled to benefits under the agreement; and that all of them who should have removed to the Choctaw-Chickasaw lands within twelve months after official notification of their identification should be enrolled upon

a separate roll designated "Mississippi Choctaws" and lands equal in value to lands allotted to citizens of the Choctaw and Chickasaw tribes should be selected and set apart for each of them, and that after a *bona fide* residence for a period of a year and proof thereof they should receive patents as provided in the Atoka Agreement, and be treated in all respects as other Choctaws. An amendment embodying these suggestions was introduced in the Senate at Mr. Owen's request, submitted to the Department of the Interior, and adversely reported upon. Section 41, however, was subsequently amended, and as finally enacted (32 Stat. 651) established the full-blood rule as a rule of evidence, allowed six months after date of final ratification of the agreement within which applications for identification might be made, six months after identification within which settlement might be made within the Choctaw-Chickasaw country, and one year after identification for making proof of such settlement to the Commission.

The passage of the Act of July 1, 1902, as thus amended, was opposed by Mr. Owen and the associates of Winton, who protested against the conditions contained in the amended sections relating to the Mississippi Choctaws as finally adopted.

The Indian Appropriation Act of March 3, 1903 (Ch. 994, 32 Stat. 982, 997), contained the following: "That the sum of twenty thousand dollars, or so much thereof as is necessary, is hereby appropriated, to be immediately available, for the purpose of aiding indigent and identified full-blood Mississippi Choctaws to remove to the Indian Territory, to be expended at the discretion and under the direction of the Secretary of the Interior." The special disbursing agent of the Dawes Commission was sent to Mississippi to carry out this provision. He there organized parties and assembled all Indians who could be found and induced to come, and they were later transported by special trains to Indian Territory and there further maintained until placed upon allotments, and supplied with tools and other equipment and rations for six months, all at the expense of the United States. The total number thus transported, maintained, and equipped was 420.

The Dawes Commission received applications from approximately 25,000 persons for enrollment as Mississippi Choctaws. Of this number 2,534 were identified by the Commission; but of these 956 failed to remove to Indian Territory or submit proof of their

removal and settlement within the time prescribed by law. The total number of applicants identified and finally enrolled and who have received allotments as members of the Choctaw Nation is 1,578, of whom only 833 appear on the McKennon Roll, and only 696 had contracts with Winton and his associates. 181 Mississippi Choctaws had voluntarily removed to the Territory in 1891 and were received into the Choctaw Nation. These were carried on the rolls as Mississippi Choctaws, making the total enrollment 1,759; but the 181 Indians just mentioned were not regarded as defendants in this proceeding.

The funds derived from sales of allotted lands of enrolled Mississippi Choctaws subject to the restrictions upon alienation prescribed by section 1 of the Act of May 27, 1908 (Ch. 199, 35 Stat. 312) are held by the Government to the credit of the individual Indians entitled thereto. All other funds belonging to enrolled Mississippi Choctaws are held as tribal funds, the names being carried on a separate roll.

As we construe the jurisdictional acts under which these claims were submitted to the Court of Claims, they contemplate not an action *in personam* to establish a personal liability against individual Indians, or a group of Indians, but a suit of an equitable nature against that class of Mississippi Choctaws who, through successful assertion of the right of citizenship in the Choctaw Nation, acquired allotments of lands in what formerly was the tribal domain, and a participation in funds held in trust by the United States; a suit having the object of imposing an equitable charge upon their funds and lands for a reasonable and proportionate contribution towards the value of services rendered and expenses incurred by the claimants in securing for said class of Indians a beneficial participation in the trust estate, according to the principle applied in *Trustees v. Greenough*, 105 U. S. 527, 532, *et seq.*, and *Central Railroad v. Pettus*, 113 U. S. 116, 122-127. The present suit is of that nature.

It is thoroughly established that Congress has plenary authority over the Indians and all their tribal relations, and full power to legislate concerning their tribal property. The guardianship arises from their condition of tutelage or dependency; and it rests with Congress to determine when the relationship shall cease; the mere grant of rights of citizenship not being sufficient to terminate it. *Lone Wolf v. Hitchcock*, 187 U. S. 553, 564, *et seq.*; *Tiger v. West-*

ern Investment Co., 221 U. S. 286, 310-316. In authorizing the present suit Congress evidently recognized that it was impracticable to bring before the court all interested individual Choctaws; hence, treating them as a class, it designated the representatives who should defend for them, by analogy to the familiar practice in equity, recognized in Equity Rule 38 (226 U. S. 659). To the objection that the Government's trusteeship of the funds of these Indians and its guardianship over their interests in the allotted lands made it necessary that the United States should be a party to the proceeding, it is sufficient to say that the regulation of this matter is clearly within the power of Congress, and that Congress acted within that power in constituting the governor of the Choctaw Nation the representative of the defendants upon whom notice of the suit was to be served in their behalf, and designating the Attorney General of the United States as their attorney to appear and defend the suit. We are clear, therefore, that there is no substantial basis for the contention that the jurisdictional Acts have the effect of depriving the Indians of their property without due process of law and hence are in conflict with the Fifth Amendment; a contention which, while overruled by a majority of the Court of Claims, was acceded to by the Chief Justice in a concurring opinion, 51 Ct. Cls. 324-327.

The claim of Winton, Owen, and associates, is based wholly upon services rendered—nothing being asked because of expenses incurred or moneys disbursed. According to the findings the services rendered were in the nature of professional services before Congress and its committees, individual Representatives and Senators, the Dawes Commission, etc., intended to establish the right of the Mississippi Choctaws to participation in the material benefits of citizenship in the Choctaw Nation, and to secure such legislation by Congress as might be needed for the practical attainment of the object sought. The findings render it clear that services of this nature, altogether proper in character—not lobbying, in the odious sense—were rendered by these claimants under particular employment by many individual Mississippi Choctaws, but with the object, incidentally, of benefiting the Mississippi Choctaws as a class, because only so could the clients of the claimants be benefited. We make no doubt that, for proper professional services rendered and expenses incurred in promoting legislation that

has for its object and effect the rescue of substantial property interests for a class of beneficiaries under a trust of a public nature, it is equitable to impose a charge for reimbursement and compensation upon the interests of those beneficiaries who receive the benefit, the same as if a like result had been reached through successful litigation in the courts. In either case there is the same curious analogy to the salvage services of the maritime law; and while it may be more difficult to weigh the effect of a service rendered in promoting legislation and to estimate its value than in a case of successful litigation, we think the principle of *Trustees v. Greenough* and *Central Railroad v. Pettus* applies in the one case as in the other.

The fact that in the present case the services were rendered under contracts with particular Indians, whether valid or invalid, is no obstacle to a recovery. Services not gratuitous, and neither *mala in se* nor *mala prohibita*, rendered under a contract that is invalid or unenforceable, may furnish a basis for an implied or constructive contract to pay their reasonable value. *King v. Brown*, 2 Hill (N. Y.) 485, 487; *Erben v. Lorillard*, 19 N. Y. 299, 302; *Smith v. Administrators of Smith*, 28 N. J. Law 208, 218; *McElroy v. Ludlum*, 32 N. J. Eq. 828, 833; *Gay v. Mooney, Admr.*, 67 N. J. Law 27, 687; *N. Y. Central & Hudson River R. R. Co. v. Gray*, 161 App. Div (N. Y.) 924, 932; affirmed 239 U. S. 583, 587.

And assuming the last set of contracts made by Winton and Owen with the Mississippi Choctaws (including the Daley contracts) be regarded as valid, they still do not create an obstacle to the present suit. As between the claimants and their own clients, the existence of valid express contracts would bar recovery upon an implied contract. But there was no privity between claimants and the Mississippi Choctaws as a class, no contract having been made with them in their aggregate capacity and the individual contracts not including all members of the class. Under the equitable doctrine that we hold applicable, claimants, having substantially performed the agreements, might demand compensation under them as against their own clients, and the latter would then be entitled to a ratable contribution upon the basis of a *quantum meruit* from their fellow beneficiaries whose interests in the trust estate were secured and rendered available through the services of

claimants. And by way of avoiding circuitry of action the equitable proceeding may well be brought, as it has been brought, by claimants directly against the beneficiaries of the trust; claimants waiving, as they must, any right to recover under the contracts the measure of compensation prescribed therein. Hence, whether valid or invalid, the contracts are important merely as they show that claimants were not intermeddlers but were employed by large numbers of Mississippi Choctaws, members of the benefited class, and that their services were not intended to be gratuitous.

But, in order that there may be an equitable charge in such a case, it is essential that the services rendered shall have been substantially instrumental in producing a result beneficial to the class of *cestuis que trustent* upon whose interests the charge is to be imposed. And while from the facts found it is altogether probable that the services of Winton and associates did materially conduce to bring about a result beneficial to the Mississippi Choctaws by furthering the measures of legislation and administration that were needed to give them a participation in the lands and funds of the Choctaw Nation, there is no specific finding of fact upon that subject. If, from the circumstantial facts as found, it followed as a necessary inference that the services did materially contribute to produce the effect indicated, it might be held that the ultimate fact resulted as a conclusion of law. See *United States v. Pugh*, 99 U. S. 265, 269-272. But the facts as found are inconclusive respecting the crucial point. Some of the services set forth in the findings clearly tended to produce a beneficial result; but there were others having apparently a contrary tendency. The interference by Winton with the work of Commissioner McKennon in making up his roll, and with the work of the second party in making identifications; the insistence before Congress upon measures for granting to the Mississippi Choctaws the rights of citizenship in the Nation while retaining their residence in Mississippi; and the opposition to the passage of the Act of July 1, 1902, in its final form, may be mentioned. However reasonable and well-intended these acts on the part of the claimants may have been—attributable as probably they were to zeal in the interests of the Indians—it cannot be said to be free from doubt that the efforts of claimants, taken as a whole, advanced the claims of the

Mississippi Choctaws as a class to citizenship in the Nation and constituted a material factor in producing the ultimate advantageous result.

But there were requests for additional findings, directed to the very point upon which findings are wanting. These requests were preferred under Rules 90-95, but were filed more than the prescribed sixty days after judgment. The court in its discretion might have rejected them on this ground. Not doing this, however, it passed upon the merits of the requests, as was reasonable in a case so important and so complicated; and since, from the reasons given for rejecting them, it appears that the court to some extent misapprehended the nature of the main issue, and the bearing of the requested findings thereon, it cannot be said that had it not done so it would have rejected the requests because not filed in due season.

Many of the requests, while suggestive of matters that might well have been included in the findings, either are not framed with sufficient definiteness to enable us to say that there was error in rejecting them, or are objectionable for other reasons. But those here stated ought to have been acceded to:

XXIX-R (52 Ct. Cls. 128). "Whether or not the labor of Robert L. Owen in behalf of the rights of the Mississippi Choctaws to citizenship in the Choctaw Nation, from July, 1896, to 1906, resulted in any benefit or value whatever to the Mississippi Choctaws."

XXXI-E (52 Ct. Cls. 130). "Whether or not the 1,643 Mississippi Choctaws who were admitted to citizenship in and received allotments as members of the Choctaw Nation obtained the right to become such citizens and thereby receive allotments as a result to any extent whatever of any of the labor and work done by Robert L. Owen and associates during the period of several years prior to the passage of the acts under which they were enrolled and allotted; and what compensation is equitable or justly due therefor on the principle of *quantum meruit* as required by the jurisdictional act in this case."

The reasons given for the rejection of these requests are not satisfactory; and for failure to make findings in response thereto, the judgment in the case of Winton and associates, No. 6, must be reversed, and the cause remanded for additional findings as requested.

The claim in No. 12, Katie A. Howe, executrix of Chester Howe, deceased, like the one we have been discussing, is based upon alleged legal services rendered before Congress and the Interior Department in representing and protecting the interests of the Mississippi Choctaws and establishing their rights in and to lands in the Choctaw Nation. The findings show that Chester Howe, having acquired an interest in a large number of contracts taken by a firm of Hudson & Arnold, or the members of the firm, with individual Mississippi Choctaw claimants, having the object of securing the rights of the latter to allotments in the tribal lands of the Choctaw Nation and removing the Indians to the Indian Territory, was actively engaged for about a year and a half in pressing the claims of those Choctaws upon Congressmen and Senators, the Sub-Committee on Indian Affairs of the House of Representatives, the officials of the Indian Office, and the Secretary of the Interior. It is found not to have been established by the evidence that Howe's services were effective in establishing the claims of the Mississippi Choctaws to citizenship in the Choctaw Nation, or that such legislation as was enacted, under which they received allotments in the tribal lands, was the result of his professional services. The vital element of a benefit conferred upon the Mississippi Choctaws as a class is lacking, and from what we have said it is manifest that the judgment of the Court of Claims as to this claim must be affirmed.

In the other cases covered by the present appeals, viz., Bounds, No. 7, London, No. 8, Field and Lindly, No. 9, Beckham, No. 10, and Vernon, No. 11, the findings show no benefit conferred upon the Mississippi Choctaws as a class for which recovery can be had under the jurisdictional Acts. The claims of Bounds, Beckham, and Vernon are based upon services rendered and expenses incurred in behalf of individual Indians. London did nothing to advance the claims of the Mississippi Choctaws to citizenship in the Nation. Lindly and Field claim as associates of Chester Howe; it does not appear that Lindly performed any meritorious service for the Indians; Field was active in impressing upon Congressmen and Senators his views as to necessary and proper legislation for securing the rights of the Mississippi Choctaws to citizenship in the

Choctaw Nation; but the extent and effect of such services do not appear, nor does it appear that the legislation finally enacted was the result of said services. In none of these cases does the record show any proper foundation laid for a remand for further findings. All these claims were properly rejected.

No. 6. Judgment reversed, and the cause remanded for further findings of fact as above specified.

Nos. 7, 8, 9, 10, 11, and 12. Judgments affirmed.

Mr. Justice VAN DEVANTER and Mr. Justice McREYNOLDS took no part in the consideration or decision of these cases.

A true copy.

Test:

Clerk Supreme Court, U. S.